

(27,145)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 391.

J. M. THOMPSON, MASTER AND CLAIMANT OF THE
STEAMSHIP "WESTMEATH," &c., PETITIONER,

vs.

PETER LUCAS AND GUSTAV BLIXT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

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Original.

United States Circuit Court of Appeals for the Second Circuit.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,

VS.

THE STEAMSHIP "WESTMEATH," Her Engines, etc.; J. M. THOMPSON, Claimant-Appellant.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Eastern District of New York.

United States Circuit Court of Appeals, Second Circuit. Filed Jul. 11, 1918. William Parkin, clerk.

1

Statement.

1916.

- April 14. Order entered allowing libelant to sue without filing stipulation for costs.
- " 14. Petition filed.
- " 14. Libel filed.
- " 26. Claims of agent filed by K. W. & H.
- " 26. Stipulation for costs filed.
- " 26. Stipulation for value filed.
- June 21. Notice of motion filed.
- " 28. Motion for Interlocutory Decree granted by Chatfield, unless answer filed by July 12.
- July 15. Answer filed.
- Aug. 25. Note of issue.

1917.

- Feb. 12. Case tried before Chatfield, J.
- " 12. Deposition filed (K. W. & H.)
- " 12. Two stipulations filed by (K., W. & H.).
- " 12. Deposition filed by S. B. Axtell.
- " 12. Deposition filed by S. B. Axtell.
- " 19. Stipulation filed.
- Aug. 1. Opinion filed.
- Sept. 19. Final decree filed.
- " 19. Bill of costs filed.

1918.

- Jan. 25. Assignment of errors filed.
- " 25. Notice of appeal filed.

March 1. Stipulation and agreement that stipulation for value filed be as the bond for damages and costs on appeal filed.

2

Libel.

To the Honorable Judges of the United States District Court for the Eastern District of New York:

In Admiralty.

The libel of Peter Lucas and Gustav Blixt, firemen on board the Steamship Westmeath, against the said steamship, her engines, tackle, apparel, etc., and against Captain Thompson, the master of said vessel, in a cause of wages, civil and maritime, alleges as follows:

First. That the Steamship Westmeath (Official number 117381), is a British merchant vessel of 5,200 tons register, owned by the New Zealand Shipping Company, Lim., 138, Leadenhall Street, City, London, engaged in freight transportation between ports in the United States, Australia and other parts; that she is now lying in that part of Brooklyn known as Bush Docks, Pier No. 2, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Second. That on or about the 18th day of December, 1915, Captain Thompson, the master of the Steamship Westmeath, by himself or his agent, hired the libellant Peter Lucas, to serve as fireman, on board said vessel, for and during a voyage from Port Perry, Australia, to New York, via Wellington, New Zealand, at and after the rate of wages of Ten Pounds, sterling, per month, and a bonus of One Pound, sterling, per month, for risk incurred by your libellant owing to the state of war in Europe; that on or about the 8th day of December, 1915, the master of said vessel, by himself or his agent,

3 hired the libellant, Gustav Blixt, to serve as fireman, on board the said vessel, for and during a voyage to New York, via Sydney, Australia, and Wellington, New Zealand, at and after the rate of wages of Ten Pounds, sterling, per month, and a bonus of One Pound, sterling, per month, for risks incurred by your libellant owing to the state of war in Europe; that in pursuance of said agreement, the libellants entered into the service of the said vessel as such seamen as aforesaid, on or about the respective dates as aforesaid.

Third. That said vessel, having left Wellington, New Zealand, proceeded, with libellants on board, for the Port of New York, where she safely arrived, delivered her cargo, and did proceed to load cargo; that on the 8th day of April, 1916, the libellant Gustav Blixt did make a personal and direct demand upon Captain Thompson, the master of the Steamship Westmeath for one-half of the wages then owing to your libellant; that said demand was made by your libellant in accordance with the provisions of Section 4530 of the United States Revised Statutes, Act of March 4th, 1915; that the master of the said vessel absolutely refused this demand of the libellant; that under and by virtue of the provisions of the said section, the

libelant then became entitled to the full amount of the wages then due and owing him from the said vessel, in the sum of Thirty-seven Pounds, nine shillings, and four pence, or in United States money at the current rate of exchange (\$4.77 to the Pound sterling), would be One hundred and seventy-six (\$176.00) Dollars, and forty-

4 clothing and effects on said vessel, or for the value thereof in the sum of Sixty-five (\$65.00) Dollars; that on the 10th day of April, 1916, the libelant, Peter Lucas did make a personal and direct demand upon the master of the said vessel for one-half of the wages then owing him; that said demand was absolutely refused by the said master; that under and by virtue of the provisions of the above mentioned section, the libelant then became entitled to the full sum of the wages then due and owing the libelant in the sum of Twenty-three Pounds, fourteen shillings and eight pence, or in United States money at the current rate of exchange, the sum of One hundred and nine (\$109.71) Dollars and seventy-one cents, over and above all payments made on account; that libelant makes a further demand for his clothing and effects on said vessel, or for the value thereof in the sum of Sixty-five (\$65.00) Dollars.

Fourth. That during the whole time the libelants were on board the said vessel, they well and faithfully performed their duty as such firemen, as aforesaid, and were obedient to all lawful commands of the said master and the other officers of the vessel, whereby, and by reason of the provisions of the said section of the United States Revised Statutes, as aforesaid, they became entitled to demand from the said vessel as follows: The libelant Lucas, for his wages and monetary compensation for his clothing and effects, the sum of One hundred and seventy-four (\$174.71) Dollars and seventy-one cents; and to the libelant Blixt, the sum of Two hundred and forty-one (\$241.49) Dollars and forty-nine cents.

5 Fifth. That all and the singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libelants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the Steamship Westmeath, her tackle, apparel, engines, etc., and that the said Captain Thompson, master of the said vessel, and all persons having any right, title or interest in said steamship, her tackle, apparel, engines, etc., may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the wages and monetary compensation aforesaid, in the sum of Four hundred and sixteen (\$416.20) Dollars and twenty cents, and that the said vessel may be condemned and sold to pay the same, and that the libelants may have such other and further relief in the premises, as in law and justice they may be entitled to receive.

SILAS B. AXTELL,
Proctor for Libelants.

Office and Post Office Address, 1 Broadway, Borough of Manhattan, City of New York.

6

Answer.

To the Honorable the Judges of the United States District Court for the Eastern District of New York:

The answer of J. M. Thompson, claimant of the steamship Westmeath, to the libel of Peter Lucas and Gustavus Blixt, firemen, against the steamship Westmeath, in a cause of wages, civil and maritime, alleges on information and belief as follows:

First. He admits that the steamship Westmeath is a British merchant vessel owned by the New Zealand Shipping Company, Limited, of 138 Leadenhall Street, London, England; that the vessel is a tramp steamship engaged in the carriage of freight, and that at the time the libel was filed was within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Second. He admits that on or about the 19th day of December, 1915, the claimant and master of the steamship Westmeath, at Port Pirie, Australia, signed on the ship's articles the libelant Lucas as a fireman at the rate of £10 per month, and admits that on or about the 8th day of December, 1915, at Sydney, Australia, he signed on the ship's articles the libelant, Blixt, as a fireman at the rate of £10 per month. He denies all the other matters alleged in the second article of the libel.

Third. He admits that the steamship Westmeath arrived in New York where she discharged and loaded. He denies all the other matters alleged in the third article of the libel.

7 Fourth. He denies the matters alleged in the fourth article of the libel.

Fifth. He denies each and every matter alleged in the fifth article of the libel.

Sixth. Further answering the claimant alleges that the steamship Westmeath is a British steamship and the contract of service which the libelants entered into when they signed the ship's articles in December, 1915, was a British contract governed by the Laws of Great Britain and Ireland, and by entering into the service of a British ship the libelants subjected themselves to the Laws of Great Britain and Ireland and any claim which they may put forward against the said steamship is governed by the said law.

By the terms and provisions of that law, to wit: Merchants' Shipping Act of 1894, 57, 58 Vict., Chap. 60; and the Merchants' Shipping Act of 1906, 6 Edw. VII, Chap. 48, the libelants are not entitled to put forward any claim for wages and are barred by reason of their desertion from maintaining this action.

Seventh. Further answering the claimant alleges that the libelant, Lucas, an alien, signed on the ship's articles as a fireman at Port

Pirie, Australia, before the British Consul on or about December 19, 1915, and that the libelant, Blixt, a Swedish subject, signed on the ship's articles as fireman on or about December 8, 1915, before the British Consul at Sydney, Australia, for a voyage not to exceed one year, beginning on the 4th of August, 1915; and that at the times mentioned in the libel the libelants were members of the ship's crew. On or about the 9th day of April, 1916, at New York, the libelants, Lucas and Blixt, deserted the said steamship and refused to return to work on board although requested by the master to do so. Under the British Law which governs the relations of the libelants with the said steamship the libelants are deserters and have forfeited all their rights and effects.

8 Eighth. Further answering, the claimant alleges that all the matters set forth in the libel relate to the internal management of a British steamship and that in accordance with the Merchant's Shipping Acts and with international comity the settlement of such matters should be left to the British Consul at the port of New York, and the claimant therefore requests that this Court decline to take jurisdiction of this action.

Wherefore, the claimant prays that the libel herein may be dismissed with costs to the claimant as against the libelant and that the Court will grant to the claimant such other or further relief as the justice of the cause may require.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

9 STATE OF NEW YORK,
County of New York, ss:

William H. McGrann, being duly sworn, deposes and says:

I am a member of the firm of Kirlin, Woolsey & Hickox, proctors for the claimant herein.

The foregoing answer is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe — to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements made by the master, officers and crew of the steamship Westmeath.

The reason this verification is not made by the claimant is that he is not now within the United States.

WILLIAM H. McGRANN.

Sworn to before me, this 14th day of July, 1916.

CLETUS KEATING,
Notary Public, 33, New York County.

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Minutes of Trial.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT

VS.

STEAMSHIP "WESTMEATH."

February 12, 1917.

Before Thomas I. Chatfield, District Judge.

Case called for trial.

Appearances:

Silas B. Axtell for libellant.

Kirlin, Woolsey & Hickox by Mr. Potter for claimant.

Mr. Axtell addresses Court on behalf of libellant.

Depositions of Peter Lucas and Gustavus Blixt read in evidence and ordered filed.

Direct examination read by Mr. Axtell.

Cross-examination read by Mr. Potter.

Rebuttal examination read by Mr. Axtell.

Libellant rests.

Depositions of John N. Thompson read on behalf of claimant and ordered filed.

Direct examination read by Mr. Potter.

Cross-examination read by Mr. Axtell.

Redirect examination read by Mr. Potter.

Mr. Potter offers in evidence the following in connection with said deposition:

11 Notice to master, etc., marked Claimant's Ex. 1.

2 Accounts, marked Claimant's Exs. 2 and 3.

Certified copy of Articles of Agreement, marked Claimant's Ex. 4.

Mr. Potter offers and reads into record, two stipulations which are ordered filed.

Claimant rests. Libellant rests.

Testimony closed.

Mr. Axtell argues on behalf of libellant.

Mr. Potter argues on behalf of claimant.

Decisions reserved. Brief submitted on behalf of claimant.

Brief on behalf of libellant to be submitted on Feb. 13, 1917.

12 United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Engines, Boilers, Tackle, Apparel, etc.

The Testimony of Libelants, Peter Lucas and Gustav Blixt, Witnesses in Their Own Behalf, Taken de Bene Esse at the Office of Silas B. Axtell, 1 Broadway, the 17th Day of April, 1916, Before Maurice K. Wise, a Notary Public.

Appearances:

George W. Prettyman, representing Kirlin, Woolsey & Hickox, for Claimant.
Silas B. Axtell for Libelants.

It is further stipulated that the signing and certification of said testimony be waived; that a copy of the testimony be served on Messrs. Kirlin, Woolsey & Hickox, and if the matter goes to trial that the stenographer's minutes be a taxable cost.

PETER LUCAS being duly sworn deposes and says as follows:

By Mr. Axtell:

Q. What is your name?

A. Peter Lucas.

Q. Were you a member of the crew of the Westmeath?

A. Yes, sir.

13 Q. You signed articles where?

A. West Australia, Port Parry.

Q. Were the articles read to you?

A. They took me aboard Sunday night and the ship was at anchor. Of course they read me the articles, but I did not understand properly what they said.

Q. Who read them to you?

A. The captain.

Q. Anybody else present?

A. The chief engineer was there.

Q. What did the articles say?

A. The ship had 8 months' articles, from there to New York or Boston. He told me the wages were ten pounds per month, and I asked him if he pay me off in the States so he says to me, if I get another man he would pay me off, and that is all he told me there.

Q. Who took you aboard the ship?

A. The captain.

Q. Any shipping master in this case?

A. There was a runner on the ship.

Q. When you got to New York, did you ask to be paid off?

A. I asked him in Boston.

Q. Did he pay off?

A. No, he refused to pay us.

Q. What date was that?

A. About 20 days ago.

Q. That was about the 26th of March, 1916?

A. Yes, something like that.

Q. When did you get to New York?

A. We got here two weeks ago to-day.

Q. Did you ask the captain to pay you off as soon as you got to New York?

A. Yes, I asked him.

Q. What date was that?

A. As soon as we got here.

14 Q. What did he say?

A. He said he couldn't do it.

Q. Did you say anything to him about the promise he made?

A. Yes, and he says, "We will see what we can do later on," but of course he wouldn't give me a chance to speak to him.

Q. Were the articles of the ship posted in the fore-castle of the vessel?

A. No, sir.

Q. Was there a copy of the scale of provisions posted in the fore-castle of the vessel?

A. No, sir.

Q. Did you make any other demand for wages upon the captain in New York?

A. No, sir.

Q. Did you come to this office for legal advice?

A. Yes, sir.

Q. Were you advised to make a certain demand upon the captain for half wages?

A. Yes, sir.

Q. Did you make any such demand upon him?

A. Yes, sir.

Q. When?

A. A week ago now.

Q. What day of the week?

A. Last Monday.

Q. What time of the day?

A. About 9 o'clock.

Q. Who was with you?

A. This man (designating Gustav Blijxt).

Q. Tell me just what you said to the captain at this time?

A. I been asked him for \$50.00 Saturday, so he says to me, "I got no money to give you?" I don't say anything more to him, I walked down and went to work, and I was up there on Monday and asked him for half wages and he says to me, "Can't do it." Then I come up here.

Q. On what day did you come to the office of The Legal Aid Society for advice?

A. Monday.

15 Q. Was that before or after you made the demand on the captain?

A. Of course I was up here before then, and then I went down to the captain and asked him for half wages and he refused it.

Q. Then you came back to The Legal Aid Society and reported that fact?

A. Yes, sir.

Q. And I told you I would commence suit immediately?

A. Yes, sir.

Q. And then you signed the papers here?

A. Yes, sir.

Q. How much were you getting a month?

A. Ten pounds.

Q. What were you on board?

A. A fireman.

Q. What nationality are you?

A. Greek.

Q. How old are you?

A. 28 years.

Q. You speak English?

A. Yes.

Q. Do you read English?

A. No, I don't read it.

Q. Do you read Greek?

A. No.

Q. How many years did you go to school?

A. Two years.

Q. How long have you been going to sea?

A. Twelve years.

Q. You have shipped on British ships before?

A. Yes, sir.

Q. You know that the provisions of the articles provide that you be paid off in the United Kingdom?

A. Yes, sir.

Q. Are you in the habit of making oral agreements with the captains to be paid off before the term of the agreement expires?

A. I asked him to pay me off in the States.

Q. Where did you sign on?

A. I signed on in Australia.

Q. Have you ever asked that on any other ship?

A. Yes, sir, and I have been paid off in American ships.

16 Q. Where?

A. At Port Parry.

Q. How far from shore was the ship lying?

A. When I signed on it was ten miles from town.

Q. Was there any British Consul there?

A. No, just American.

Q. Wasn't this an Australian port?

A. It was a British port, so there wasn't any British Consul there.

Q. Who else was there?

A. Nobody there but the captain.

Q. Was there a British Shipping Office at Port Parry?

A. Yes, a Shipping Office there, but this was Sunday and it was closed.

Q. How much wages is there owing you?

A. Four months' wages to-morrow.

Q. How much does that amount to?

A. Ten pounds per month, 40 pounds.

Q. How much have you been paid since you joined the ship?

A. I got 11 pounds.

Q. How much advance did you get?

A. Nothing.

Q. What was the first money you drew, and where?

A. He gave me 10 shillings in Australia.

Q. What port?

A. Littleton.

Q. What was the next?

A. In the same place he gave the tailor 2 pounds for me. The next port was Wolfton, Australia, he gave me one pound. The next was Boston, \$5.00 cash and \$13.50 to the tailor. I asked him for \$20.00 but he wouldn't give me that.

Q. Did you receive anything else?

A. Yes, something in Baltimore. He wouldn't give me any cash but he gave the tailor an order.

Q. For how much?

A. \$13.50.

17 Q. How much cash did the tailor give you for the order?

A. \$10.00.

Q. Do you know whether the captain got any of that \$3.50?

A. Of course the tailor told me that the captain got ten per cent.

Mr. Prettyman: I move to strike out this answer as hearsay.

Q. Slop-chest on this vessel?

A. Yes, sir.

Q. Did you get any slops?

A. No, only tobacco.

Q. Did many of the sailors on this ship get stuff from this tailor?

A. Yes, at Boston and Baltimore.

Q. Is that your account?

A. Yes, sir.

Q. Did you keep it yourself?

A. Yes, sir.

Note: Offers account of wages identified as "Exhibit A."
(Exhibit "A" attached to Page 36.)

Q. Did you note down the advances on this paper at the time you got them, or did you mark them all at once?

A. Everything I put down as I got it.

Q. Did you have a book or keep it on this paper?

A. On this paper.

Q. Have you a fountain pen?

A. Yes, sir.

Q. Whose writing is this?

A. A fireman on the ship.

Q. Did one of the firemen keep this for you?

A. Yes, sir.

Q. But you had the paper in your possession?

A. Yes, sir, and the steward had one.

Q. And the steward kept a copy of it?

A. Yes, sir.

18 Q. And you claim a balance of 29 pounds wages?

A. Yes, sir.

Q. Are your clothes aboard the ship?

A. Yes, sir.

Q. How much are your clothes worth?

A. \$100.00.

Q. What did they consist of?

A. Two suits of clothes costing \$70.00, blankets, underwear, all my working clothes, two pairs of shoes. I guess that it all.

Q. Any shaving effects?

A. Yes, of course, razors, strops, etc.

Q. Would you take \$100.00 for it?

A. Yes, sir.

Cross-examination.

By Mr. Prettyman:

Q. Are you still working on board this ship?

A. No, sir, I go down every day, but I don't work, the doctor told me not to work for a couple of days, so I stayed in bed a few days, but the doctor didn't come back to examine me again.

Q. Have you been discharged from this ship?

A. No, I have not.

Q. Have you tried to get your discharge?

A. Yes, of course if I did.

Q. About what time did you sign on the articles in Australia, what month?

A. The 18th of December, 1915.

Q. When is your time up according to the articles which you signed?

A. He didn't tell me when the articles were up, but I asked the fellows on the ship, and they told me the articles is up to August this year.

Q. Then your time is not up yet?

A. No, sir.

Q. According to the articles which you signed in Australia the time is not up yet?

A. No, sir.

19 Q. These articles were read over to you, and you understood what you were doing?

A. They didn't tell me, they just asked me where I am living,

the wages of the ship ten pounds, that the ship is going to Wellington for orders and from there to the United States. That is all I know from the captain; that was Sunday night 12 o'clock when we signed on.

Q. You understood pretty well what you were going to do under those articles, didn't you?

A. Of course I understood, but I asked him to pay me off in the States, and he said if we get another man.

Q. He said he would pay you off if the captain got another man?

A. Yes, but he got a chance to get another man between three ports, Boston, Philadelphia and New York.

Q. It would cost him a good deal to get another man and he would have to pay the shipping agent, wouldn't he?

A. Yes, of course.

Q. So you could get your discharge if the captain got another man?

A. Yes, sir.

Q. And as he didn't get another man he couldn't do it?

A. He couldn't do it, that is what he said to me.

Q. When you made your demand upon the captain in New York didn't you say to the captain that if he would pay you one-half your wages you would be satisfied, and call the agreement off?

A. Yes, if he gave me half my wages.

Q. So that you wouldn't have to go back on the ship?

Mr. Axtell: I object to the form of question put to the witness, as witness does not understand English, and the question is so
20 formed as to put conclusions in his mouth.

A. Yes, sir.

Q. What did you say to the captain when you went down there on Monday?

A. I went up in his room, asked him for one-half wages, he didn't give me any chance to speak, just said "I can't do it." He shut his door and went back in his room.

Q. Did you at the same time ask him to let you have your discharge?

A. No, I didn't ask for my discharge?

Q. You had been up there several times asking him to discharge you?

A. No, sir.

Q. You asked in Boston, didn't you?

A. Yes, I asked the captain.

Q. Did you ever ask in New York?

A. Yes, I asked in New York, too.

Q. When was the last time you asked before Monday?

A. Thursday afternoon of the week before.

Q. For quite a while before this Monday, the 10th, you had been making demands upon the captain for your release from the ship?

A. Yes, sir.

Q. You had been willing to throw up the whole agreement for half your wages?

A. Yes, sir.

Q. On Monday when you went on the ship after you had been up to see Mr. Axtell, and you went back to the ship, weren't you willing to give up the agreement which you had made in Australia in the shipping articles, and be released for half your wages?

Mr. Axtel: I object to this question.

21 A. If I got half my wages I would have to go back on the ship.

Q. You understand you have to do that?

A. Yes.

Q. You wouldn't mind doing that at that time?

A. No, sir.

Q. You are not willing to go back now?

A. No, sir.

Q. What has happened since that time?

A. Nothing.

Q. Well you say you were willing to go back on Monday if he paid you half wages?

A. Yes, of course if I didn't have to wait the rest of the time.

Q. Wouldn't you have been willing to give up half your wages to get away from the ship?

Mr. Axtell: I object to that on the ground that it is unfair to the witness, as any seaman on a British ship is willing to give up half of his wages to get off her, if he doesn't know that he has a legal claim.

A. (No answer.)

Q. Which were you more anxious to do, to obtain your release from the vessel or get half wages?

Mr. Axtell: I object to these questions as to the intention of the witness. I object on the ground that it is incompetent, and that it is well settled in Law that the intention of parties to controversies is to be determined by their acts.

A. (No answer.)

22 Q. You were satisfied with the terms of the articles as they were read to you?

A. Of course they gave me the terms but said I would be paid off here in the States.

Q. Did he make that promise to pay you off in New York provided that he got another man, before you agreed to the articles or after you agreed to the articles?

A. Before I signed the articles.

Q. Did you sign the articles yourself?

A. Yes, sir.

Q. Did you make your mark or sign your name?

A. No, I signed my name.

Q. You are perfectly sure that on this Monday you made a demand upon the captain for half wages?

A. Yes, sir.

Q. Anything else?

A. Nothing else.

Q. You didn't ask him for all your wages?

A. Yes, I did before that.

Q. Did you ask for all of your wages in Boston?

A. Yes, sir.

Q. You say you have been on British ships before?

A. Yes.

Q. And you have gone through the signing of articles, etc., before, on British ships?

A. No, sir, I didn't sign articles, I was on English vessels around the coast, that is what they call weekly boats, they pay the men every week.

Redirect examination.

By Mr. Axtell:

Q. Was this man with you when you signed at Port Parry (designating Blixt)?

A. Oh, no, he signed before me.

Q. Who did you say was with you besides the captain when you signed on?

A. The chief engineer.

23 Q. Did the captain tell you anything about paying you off in the States before going aboard the ship?

A. Yes, he told me in Parry.

Q. How did you get out to the ship from Parry?

A. A tug boat.

Q. Any other men taken aboard at the same time?

A. Yes, sir, one fellow belonging to Australia.

Q. Is he still aboard?

A. Yes, sir.

Q. What is his name?

A. I don't know.

Q. Was he there when you signed articles?

A. No.

Q. You were not both in the room at the same time?

A. No, sir.

Q. Do you know whether the captain made any promises to him to pay off in the States?

A. I didn't hear anything.

Q. Did he go out on the tugboat with you?

A. Yes, sir.

Q. Was he with you when the captain talked to you at Port Parry?

A. No, sir.

Recross.

By Mr. Prettyman:

Q. What did the captain say to you before going out on the ship?

A. He didn't say very much. He told me it was a good ship and was going to New Zealand for orders and from there to the United States. The runner gave me the job.

Q. Was that runner on the ship, and did you ever see him afterwards?

A. No, sir.

Q. Where did he stay?

A. At Parry.

Q. How do you know he is a ship runner?

A. He said he was a ship runner.

Q. A runner for a shipping agent?

A. No, sir.

Q. What did the captain say to you?

24 A. He told me to go on board the ship and sign on, and he told me many times that the ship was going to New Zealand for orders and from there to the United States and then he took me on board the ship and signed on.

Q. He didn't make any terms to you then?

A. I asked him to pay me off in the United States and he said yes, and I asked him before I signed on and he said "Yes, when you get another man I pay you off."

Q. He didn't mean the first time he touched a port, did he?

A. No, sir, he says when he touched the United States.

Q. He might touch here again before the eight months are up?

A. Yes, but he has to give me half my wages, I got \$100.00 from the ship and I don't want to give it all to the tailors.

Mr. Prettyman: I move to strike out the answer.

Q. The captain didn't promise any definite time when you would be paid off in the United States?

A. He promised me that I would be paid off in the States but he didn't tell me so.

Q. When did you think you would be paid off?

A. In any one of these ports, New York, Boston or Baltimore, of course this is the last port.

Q. You knew when you signed the articles that the articles said that you would have to work for eight months on the ship?

A. He didn't let me know anything like that.

Q. You said that he did a little while ago?

A. Yes, I spoke to the men in the room, and they said the articles would be up in August.

Q. Weren't these articles for one year?

A. Yes, but the crew signed in England, and that was long before.

25 Q. You had eight months more to serve when you signed on?

A. They would be up in 8 months.

Q. You knew the articles you were signing were for one year?

A. No, I don't know that, he didn't tell me so.

Q. Well, didn't you think you had a year more to serve when it said one year in the articles?

A. No, I didn't sign for a year.

Q. Just what was read to you?

A. I was speaking to the runner, and he was asked by the captain to get a fireman, so the runner said to me, "You want a ship," he came up to my place where I live. I ask him what kind. He says, fireman on an English ship. I asked him was the ship going from here. He says, "Yes, ship going from here to New Zealand for orders and then to America." That is all right. Then the captain came ashore and ask the runner, "You got a man?" Runner says, "Yes, right here." Captain says, go on get your clothes and come down on the dock to-day and go aboard the ship. So, we were in the captain's room, the chief engineer was there, and the captain of the tugboat all in the captain's cabin. So he says to me, the ship is going to New Zealand and from there to America. So he asked me, "Where do you live, how old you are," that is all I know, he didn't say anything else.

Q. The captain didn't tell you anything about the voyage, how long it would be, etc.?

A. I asked him in Parry in town. He told me the ship was going to New Zealand and then to America, and I asked to be paid off and he says, "Yes, get another man and I pay you off." Of course I didn't ask him how long it would be I knew it would be over two months.

26 GUSTAV BLIXT being duly sworn deposes and says:

By Mr. Axtell:

Q. What is your name?

A. Gustav Blixt.

Q. What nationality are you?

A. Swede.

Q. Are you a citizen of the United States?

A. No, sir.

Q. Have you your first papers?

A. No, sir.

Q. How old are you?

A. 29 years.

Q. How long have you been going to sea?

A. Since I was 18.

Q. You shipped on British vessels before?

A. Yes, sir.

Q. Where did you join the Westmeath?

A. At Sydney, Australia.

Q. What rate of wages?

A. Ten pounds per month, 1 pound bonus.

Q. Did you sign in the Consul's office?

A. No Consul there. I signed in the Government shipping Office.

Q. You were regularly signed on, the articles were read to you, and the articles provided that you be paid off in the United Kingdom, didn't they?

A. They didn't say anywhere, wherever the articles were up.

Q. You understood the articles?

A. Yes, sir.

Q. What date did you sign on?

A. The 8th of December.

Q. Were you a fireman?

A. Yes, sir.

Q. And your cause of action for wages is based entirely upon the alleged demand as set forth in your liber for half wages?

A. Yes, sir.

Q. You are one of the co-libelants in this action?

A. Yes, sir.

Q. How much is there owing you from the ship?

A. About 37 pounds English money.

27 Q. Did you draw any advances?

A. No, sir.

Q. Will you state the amounts of money you received, or have you an account of it?

A. I cannot say exactly what I got, but the steward has got an account aboard.

Q. Tell me what you remember having received?

A. In Walington, New Zealand, 10 shillings; in Littleton, 1 pound; in Boston, \$5.00; in New York, \$5.00, and two pounds 15 shillings in slops.

Q. Did you get any stuff from the tailor?

A. Yes, \$10.00 from the tailor in Boston.

Q. How much did you sign for to get \$10.00?

A. I got \$5.00 cash, and clothes \$5.00.

Q. How much did the captain pay the tailor?

A. I cannot say, but the tailor told us the captain got ten per cent on the tailor.

Q. What was the name of the tailor?

A. I can't tell you but his card is on the boat.

Q. Did you get any other money from any other tailor?

A. No, only in Baltimore, \$5.00 we got from the tailor.

Q. How much did the captain charge you?

A. He didn't charge me anything, but he got a per cent on the tailor.

Q. That is all you got in Baltimore?

A. Yes, \$5.00 in cash from the tailor.

Q. Is that the card of the tailor in Boston? (Producing car-marked Exhibit "A" for identification).

A. Yes.

Mr. Prettyman: I object as it is immaterial and irrelevant.

Q. The name which appears on this card is "Henry Cohen, boots, shoes, and rubbers, Boston, Mass." Is that the tailor?

A. Yes, that's right.

28 Q. Did you see this man on the ship?

A. Yes, sir.

Q. And you saw him at his place of business, too?

A. Yes, sir.

Q. Did you have any conversation with the captain about it?

A. No, sir.

Q. Is that all the money that you received?

A. Yes, sir.

Q. Are you positive you didn't receive any more?

A. Yes, sir.

Q. You didn't receive any slops?

A. Yes, the \$2.15 which I mentioned, and \$5.00 is the last I got in New York.

Q. When did you get that?

A. The 8th of April.

Q. Have you made a demand on the master for half wages?

A. Yes, sir. I was up Monday morning and I asked for half my wages and I said "Captain I want half my wages what I got coming."

Q. What did the captain say?

A. He said "No;" a straight No, and refused altogether.

Q. Then, what did you say?

A. Then I said, "Will you pay me off?" He say, "Yes, I will pay you off if you are willing to pay the expenses for another man," so I said "Yes" and so he said, "It will cost you \$25.90." All right I said I will get a man, and he said, "No, I'll get a man." So I said, "That'll be too much, I can't afford so much," then I said, "will you allow me to see the British Consul," he said, "You can go and see anybody you like." Then I went ashore, came up here and gave you the case here.

29 Q. Had you been to this office before you made a demand on the captain for half wages?

A. No, I knew there was a new law coming out.

Q. How did you know there was a new law?

A. I got the information from the Union delegate.

Q. Was anybody with you when you made this demand on the captain?

A. He was (indicating Lucas).

Q. You were both together at the same time when you made the demand on the master?

A. Yes, sir.

Q. And you overheard the conversation between Lucas and the captain, did you?

A. Yes, sir.

Q. And you claim the amount of your wages owing under Section 4530 United States Revised Statutes due to refusal of the master to pay you half wages on Monday April 10th?

A. Yes.

Q. When did the Union Delegate tell you about this Law?

A. Saturday while I was ashore.

Q. What was his name?

A. I don't know.

Q. Where did you see him?

A. On South Street.

Q. Was anybody else there besides you, the captain and Lucas when you made the demand on the master?

A. No, sir.

Cross-examination.

By Mr. Prettyman:

Q. When did the vessel arrive in New York, about what time?

A. Two weeks ago yesterday.

Q. You said that on the 10th, that was Monday, you went up to see the captain and asked him for half your wages, what time of the day was that?

A. 9 A. M., right after breakfast.

30 Q. Was that the proper time to ask?

A. Yes, that is the only time you can see him, he goes ashore after that.

Q. Just what did you say to him?

A. I demanded half my wages, and he says "No hope in the world," that is exactly what he said to me, Then I said "Will you pay me off if I get another man in my place?" He said "I will pay you off if you are willing to pay the expense." He says, "Mind you, it will cost you \$25.00." He wanted me to sign for cash and I said "All right."

Q. Did you sign for cash?

A. No, sir, I asked for permission to go ashore and see the British Consul and he said I could go and see whoever I wanted.

Q. You still had in mind that you could be paid off?

A. Yes, sir.

Q. You were satisfied then?

A. Yes.

Q. And you made your demand on the captain for half your wages and the captain said he wouldn't do it, and you said to him that you would be satisfied if he could pay you off?

A. Yes, I was satisfied.

Q. And you were willing to pay the expense for another man, you were anxious to get either?

A. Yes.

Q. So that is the way the matter stood when you went ashore?

A. Yes, sir.

Q. You weren't expecting half your wages, but you were expecting to arrange some deal with the captain so that you could be paid off and get another man in his place if it wouldn't cost too much?

A. Yes, sir.

31 Q. You would be willing to do it for \$6.00 or \$8.00?

A. Yes, \$10.00 or \$15.00 even.

Q. But you thought \$25.00 was too much?

A. Yes, half month's wages.

Q. What were you going to do at the British Consul's Office?

A. I was going to see the Consul to find out if I couldn't get a little more, so as to be paid off altogether, but the captain said, "You won't see the Consul before I see him."

Q. What did you actually do?

A. I went ashore and I went up to The Legal Aid Society.

Q. You didn't go to the British Consul's Office?

A. No, sir.

Q. And you haven't been there since, have you?

A. No, sir.

Q. Are you still on the ship now?

A. I have been aboard every day but sleeping ashore.

Q. You are still a member of the crew?

A. Yes, sir.

Q. Do you work every day?

A. No, I don't work.

Q. What is your position on the ship?

A. Fireman.

Q. They don't need you now?

A. No, they signed on two other men last Saturday in our places.

Q. After you came up to see Mr. Axtell, The Legal Aid Society, you stopped your negotiations with the captain for paying you off?

A. Yes, sir.

Q. And you gave up that idea altogether?

A. Yes, I put my case in here and I got a paper from here to give to the captain and we couldn't find the captain on Monday, the 10th, so I gave it to the captain on Tuesday, the 11th.

32 Q. What did the paper say?

A. It gave the captain warning to pay us off but he refused

us.

Q. You mean it was a notice that if he didn't pay half your wages you would demand your discharge and libel the ship?

A. It was some law, and I gave it to the skipper so that I could claim half my wages.

Q. Did you get any advance note after signing?

A. No, I signed on Friday and went aboard the same afternoon.

Q. Was the ship sailing soon after that?

A. She sailed at 6 o'clock Saturday morning.

Q. When did you sign on?

A. The 8th of December and left the 9th of December.

Redirect examination.

By Mr. Axtell:

Q. You never furnished the captain with a substitute?

A. Yes, I did.

Q. When?

A. On Tuesday.

Q. What did the captain do about it?

A. He took him. Just after 9 o'clock he came out of his cabin.

Q. Did the substitute stay on the ship?

A. Yes.

Q. All that day?

A. Oh, excuse me, you are talking about a different thing altogether. No, I never got another man, the captain was going to get a man in my place.

Q. Did you get a man for him?

A. No, sir.

Q. You proposed to get a substitute, but as you said before, he said "I'll get a substitute" and he wanted to charge you \$25.00, isn't that right?

A. Yes, that's right.

Q. You didn't do anything more about it?

A. No, sir.

33 Q. Have you made a demand upon him since that time for half your wages?

A. No, sir, because I put the case in here the same day.

Q. You are standing on your rights to recover your wages in accordance with your demands for half wages, that is all, isn't it?

A. Yes, that's all.

Recross-examination.

By Mr. Prettyman:

Q. Was a substitute obtained in your place?

A. He got three men the other night, but neither spoke to me afterward so I don't know whether they are in my place or not.

Q. Were you charged up for getting any of these three men?

A. He said to me when I went ashore on Monday after I got permission to go to the Consul, he said, "Mind you, I want to see the Consul before you," and then I said, "It doesn't matter to me whether I see the Consul now or after you." Then he said, "If you go ashore I'll put another man in your place and charge you \$2.50 per day," and I said, "How is that when you give me permission to go ashore and see the Consul." That is all, then I went ashore.

Q. Has anything been charged up to you on account of this?

A. No, I have been on board the ship every day, but I haven't been doing any work.

Q. Are your clothes aboard the ship?

A. Yes, sir.

Q. How much are they worth?

A. Between \$50.00 and \$60.00.

Q. What have you got there?

A. Three pair shoes, working gear, a lot of underwear, and a lot of small things.

34 Q. Any suits of clothes?

A. No, sir.

Q. Do you think they are reasonably worth \$50.00 or \$60.00?

A. Yes, sir.

Q. Would it cost that much to replace it?

A. Yes, sir.

Q. Is it packed up?

A. Yes.

Q. In a bag?

A. Yes, sir.

Q. Have you got your name on it?

A. Yes.

Redirect examination

By Mr. Axtel of Libelant Gustav Blixt in behalf of Libelant Peter Lucas:

Q. Were you on board the ship when Lucas made the demand for half wages?

A. Yes.

Q. What did you hear him say?

A. I heard him say, "You promised to pay me off here in the States." Then he said to him the same as to me, "If you are willing to pay the expense \$25.00, I will get a man in your place." There was another man there at the time.

Q. What was his name?

A. I don't know his name.

Q. What did Lucas say to that?

A. He said, "I thought you were going to pay me off here."

Q. Did you hear him say anything about half wages as he testified he did?

A. Yes, he wanted \$50.00.

Q. What else did you hear him say?

A. I heard him ask for half wages.

Q. What did the captain say to his demand for half wages?

A. He says "No."

Q. Anybody else present?

A. Except a sailor.

Q. Was this the same time that you made your demand?

A. Yes, sir.

Q. What time was that?

A. Just after 9 o'clock.

35 Q. Did this man come ashore with you?

A. Yes.

Recross-examination by Mr. Prettyman of Gustav Blixt in behalf of Libelant Peter Lucas:

Q. What demand did Lucas make first on the captain?

A. When I was up with him he demanded his money \$50.00.

Q. Give me his words as nearly as you can recall them?

A. He asked the captain for \$50.00, and the captain said "No" and left.

Q. Did he ask him to pay him off?

A. I was there too and the captain didn't ask him, and the captain said "What do you want" and I said "I want half my wages."

Q. After you made your demand on the captain what did you do?

A. I just asked for half my wages.

Q. What did the captain say?

A. He said he wouldn't do it.

Q. Did you ask him to pay you off?

A. Yes, sir.

Q. And he said he would if you paid the price of a substitute that he picked out?

A. Yes, sir.

Q. Then what did Lucas do?

A. He was willing to do the same as me.

Q. Did he turn to Lucas and say the same as to you?

A. He spoke to both of us at the same time.

Q. And he said he would pay you both off?

A. Yes, and he said "Mind you it will cost you \$25.00 expense."

Q. And the two of you went ashore?

A. Yes, sir.

36 Q. And as the matter stood then, you were still dickering with the captain about getting paid off?

A. Yes, sir, I wanted to see if I could get paid off anyway.

Q. You wanted to get paid off, but not pay so much money?

A. Yes, sir.

Q. Did you come to The Legal Aid Society with Lucas?

A. Yes, sir.

Q. You don't know whether or not the captain went to the *Counsel* or not?

A. No, we were together all day. We got a paper from the clerk in this office to take over to the captain and we went aboard on Monday afternoon at 2 o'clock, and we couldn't find the captain in the afternoon, so we went on board that night and gave it to the captain Tuesday morning.

Q. Was that a Notice of Libel you are referring to?

A. Yes, I guess so.

Q. And you say the captain failed to pay you?

A. Yes, sir.

Q. Did Lucas stay aboard the ship while you were in port?

A. He left the same day, Tuesday, he went ashore.

Q. He has been on board every day since?

A. Yes, we stop in the same house when on shore, and go on the ship every day.

Q. Do you know whether the captain obtained a substitute for Lucas?

A. I don't know.

Q. What nationality was this sailor who was with you when you made a demand on the captain for half wages?

A. He was a Dane.

Q. Did you hear him say anything at that time?

A. Yes.

Q. What did he say?

A. He asked him at the same time.

Q. What did he say?

A. He said the same thing as me. He wanted half—half his wages that was coming to him.

Q. He also said he wanted \$50, didn't he?

Mr. Potter: I object to the question as leading.

A. Yes.

Q. You had been the day before or that day (which was it) at the office of the Legal Aid Society for advice?

A. It was on the Saturday.

41 Q. And what were you advised to do?

A. To get half of our wages that was coming.

Q. Were you told anything about the new Seamen's Act?

A. Yes, certainly.

Q. What were you told?

Mr. Potter: Objected to.

A. He said that since the 1st of March a seaman could make a demand for half of his wages. And another told me—another man told me—the Union Delegate told me—the same thing.

Cross-examination.

By Mr. Potter:

Q. When did this Union Delegate tell you this?

A. On the Sunday—Saturday afternoon, when I was over on Saturday.

Q. When did you first ask the Captain to discharge you?

A. That was on the 10th of April.

Q. Didn't you ask for your discharge?

A. I asked him first for my money, and he would not give it. I said, "What about pay off?" That was what I said. And he said, "Yes, if you are willing to pay the expenses." And also he said, "It will cost you \$25, and you will have to sign for cash."

Q. And this was on the 10th?

A. The 10th of April.

Q. You asked for a discharge at that time?

A. Yes. Because I wanted to use the money. So I said, "Well, what about it? Pay me off." And his answer was "If you are willing to pay the expenses."

Q. What did you answer to that?

A. And I say, "All right;" and I asked him, "Will you allow me to see the British Consul?"

42 And he said, "You can go and see anyone you like." And when I went on shore he was going to stop me.—Captain, do you remember about this?

The Captain: Quite well.

Q. Before the 10th—between the 10th and the 3rd of April—had you asked the captain for your discharge?

A. No. I asked him Saturday for \$25, and I was refused, and I only got \$5.

Q. You wanted a discharge, didn't you, from the ship?

A. Yes, I wanted a discharge.

PETER LUCAS, called on behalf of libelants, being duly sworn, testifies:

Direct examination.

By Mr. Axtell:

Q. Lucas, do you remember the morning of April 10th, Monday morning?

A. Yes.

Q. This is the Captain here of the ship, is it? Do you know him? (Indicating Captain Thompson.)

A. Yes.

Q. Did you see him at that time?

A. Yes.

Q. Did you have any conversation with him about paying you off or paying your wages or anything?

A. Yes.

Q. What did you say to the captain, and what did he say to you?

A. I asked the captain for \$50. to send over home. He says to me, "No." The next time when I was up there again was Monday, the 10th of April. I asked him for half my wages. He said no. That was what happened at the time.

Q. Was there anybody present besides yourself?

A. Yes. Blixt was there.

Q. Anybody else besides Blixt and you?

A. One of the quartermasters was standing there on the
43. bridge.

Q. What was his name?

A. I don't know his name.

Q. How close to you was he?

A. Just as from here to the window. (Indicating.)

Q. Did you hear any of the men on the Westmeath talking about getting half their wages before you came to the Legal Aid Society's office?

Mr. Potter: Objected to.

A. Yes, I heard about it on the ship.

Q. Before or after you made this demand?

A. Before.

Q. Is that the reason you came to the Legal Aid Society?

A. Yes.

Q. When you were signed on, you heard the testimony of the

Captain this morning to the effect that he made you no promise that he would pay you off in the States? Did you hear that?

A. Yes. The captain promised me before I signed on ashore in Port Pirie. I asked him, "where was the ship going?" He said, "The ship is going to Wellington, and from there going to the States." I asked him if he would pay me off in any part of the States. And he said, "Yes; when you get another man I will pay you off."

Q. Didn't you tell me the other day that you took a man aboard the ship who was willing to sign on in your place?

A. Yes. There was two fellows went aboard to sign in my place. The chief engineer told me he was going to take a man in my place at \$2.50 a day.

Cross-examination.

44 By Mr. Potter:

Q. Lucas, when you were shipped on in Australia you wanted to come to the United States, didn't you?

A. Yes.

Q. When you arrived in New York did you make demand for discharge of the master?

A. Yes.

Q. You wanted to stay here in New York?

A. Yes.

Q. You say you went on the ship on the 10th and asked the captain for your wages?

A. Yes.

Q. Did you ask for your discharge then?

A. No. I just asked him for half my wages.

Q. Why did you do that? Did you want the money?

A. Yes. At that time I never asked him for my discharge.

Q. Why didn't you ask for half your money before that?

A. Of course, I asked him for \$50. That is about half of what is coming to me. That was the 8th day of April. He said no. I was up there Monday—that was the 10th—and I asked him for half my wages, and he said no.

Q. Which did you want the most, your half wages or your discharge?

A. Of course now I want to get my discharge and be paid off.

Q. What were the words you said to the Captain on the 10th.

A. I asked him for half my wages.

Q. Did you say anything else?

A. Nothing else. He said no. The captain was standing in the door of his room, so I asked him for half of my wages. He said no. He shut the door, and I could say nothing else; I have got to walk down.

Q. Did Blixt also ask for his wages?

45 A. Yes.

Q. Which one asked first?

A. I asked the captain first.

Q. You asked the captain first?

A. Yes.

Q. Then the door was shut when this was asked, was it not?

A. No; open; the captain opened the door.

Q. He opened the door again?

A. Yes. I was standing on the bridge alongside.

Q. How long were you on the bridge?

A. Just about 5 minutes' time.

Q. Why did you go to the Legal Aid Society?

A. When I was going up?

Q. Why?

Mr. Axtell: What reason?

A. I was asking for advice for the half of my wages. So he gave me a letter to take down to the Captain.

Q. You saw him before you got the letter, didn't you? You got the letter the second time you went to the Legal Aid Society, didn't you?

A. No, that was the first time I was up there.

Q. Didn't you go to the Legal Aid Society to get your discharge.

A. That was Monday, the 10th.

Q. But when you went to the Legal Aid Society didn't you want them to help you to get your discharge?

A. Of course.

Mr. Axtell: He testified he wanted advice.

Witness: I wanted advice.

Q. You wanted to get away from the ship?

A. Yes.

Redirect:

46 Q. You were told if you made a demand on the master for half wages he would in all probability refuse it?

A. Yes.

Q. And then in that event you would be entitled to the whole sum, no matter what promise he had made to pay you off in New York? Isn't that right.

Mr. Potter: Objected to.

A. Yes.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,

Against

THE STEAMSHIP "WESTMEATH."

Deposition of John N. Thompson, Taken on Behalf of Claimant Before Edward H. Carpenter, Notary Public, at the Office of Messrs. Kirlin, Woolsey & Hickox, No. 27 William Street, New York, April 21st, 1916.

NEW YORK, April 21, 1916—

11:30 o'clock A. M.

Present:

Messrs. Kirlin, Woolsey & Hickox (Mr. Potter), for Claimant.
Silas B. Axtell, Esq., for Libelants.

47 It is stipulated that the testimony may be taken by a stenographer, his fees to be taxable; signing, certification and filing waived; a copy of the deposition to be served on proctor for libelants.

JOHN N. THOMPSON, called on behalf of claimant, being duly sworn, testifies:

Direct examination.

By Mr. Potter:

Q. What is your present position?

A. Master of the steamship Westmeath.

Q. How long have you been master of that steamship?

A. Since September, 1915.

Q. Where did you join the ship?

A. Liverpool.

Q. At the beginning of the present voyage?

A. At the beginning of the present voyage.

Q. How long have you been a ship master?

A. About 5½ years.

Q. What certificates do you hold?

A. Master mariner's.

Q. On the present voyage you left Liverpool when?

A. September 9th.

Q. And where did you proceed to?

A. Do you mean the first port of call or our destination? Our destination was Adelaide via Durban. I stopped at Las Palmas. The voyage consisted of from Liverpool to Las Palmas, Las Palmas to Durban, and from Durban to Adelaide, and so on.

Q. Did you ship on a sailor named Lucas in Australia?

A. Yes.

Q. Where did you ship him?

A. At Port Pirie. I engaged him at Port Pirie.

48 Q. What date was this?

A. I want the Articles now. (Witness looks at Articles.)
Lucas—he signed on the 19th of December.

Q. How did he sign on?

A. He signed on at sea or practically at sea; outside the harbor; I signed him.

Q. Do you remember what day of the week that was?

A. Sunday.

Q. What was the occasion for signing on Lucas at that port?

A. The ship left the wharf at daylight on the Sunday morning; and Saturday night, as the ship was leaving on Sunday morning, two men were ashore—two firemen. The rest of the ship's company refused to take the ship to sea. I had to get the ship down the river somehow if it was at all possible; and the engineers fired the ship to sea, or fired the ship out in the river to an anchorage; and then I had to come back in a tugboat and do what I could to get other men.

Q. Did you sail the next day?

A. I sailed that night.

Q. You sailed that night?

A. I got some shipping man or somebody, who found a man named Lucas. Lucas wanted to ship. I asked him if he wanted at £10 per month. That was the wages at that time.

Q. What Articles did he sign?

A. He signed the ordinary ship Articles, as you call them, or sea to go, and he wanted to go; so I took him out on board the ship Articles—British Articles.

Q. The Articles were opened when?

A. The Articles were opened on the 4th of August, 1915.

Q. At Liverpool?

A. Half a moment! I was not there. (Witness looks at Articles.) I think they were opened at Aden.

49 Q. How long were these Articles for?

A. For 1 year—12 months.

Q. And for what voyage?

A. For a voyage of not exceeding one year's duration to any ports or places within the limits between 75 N. and 60 S. Latitude; commencing at Liverpool, thence to Australia, New Zealand, and/or United Kingdom ports and/or any ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom or Continent of Europe within home trade limits, as may be required by the master.

Q. Did you sign on another fireman in Australia by the name of Blixt?

A. Yes.

Q. Where did you sign him on?

A. Sydney I think he signed on; yes, Sydney.

Q. On what date did he sign?

A. He signed on the 8th of December.

Q. Did he sign these same Articles?

A. He signed the same Articles before the shipping master.

Q. He signed on before a shipping master?

A. Yes.

Q. On shore?

A. On shore—before the marine officer there.

Q. What wages did he sign on for?

A. He signed for £10 a month.

Q. The same as Lucas?

A. The same as Lucas.

Q. From Australia where did you proceed to?

A. New Zealand.

Q. And from there?

A. America via Montevideo.

Q. What ports did you first touch in the United States?

A. Boston, Baltimore and New York were the ports I touched at.

50 Q. Were you at the ports of Boston and Baltimore for some days?

A. Yes.

Q. Did either of these men, Lucas or Blixt, ask for their discharge or for their wages, or any part of their wages, at these two ports?

A. They asked to be discharged at these two ports.

Q. At both ports?

A. At both ports.

Q. On any particular ground?

A. No. They asked for their discharge.

Q. On condition that they should be paid off in full?

A. Yes. They wanted their discharge at Boston and Baltimore.

Q. Did they make that request repeatedly?

A. At Boston and Baltimore I remember Blixt approachnig me on one or two occasions.

Q. Asking for his discharge?

A. Yes. The man Lucas at Baltimore, he got into trouble.

Q. What was that?

A. He was out of the ship some day; he was brought up I heard as a witness on some offense; and the ship was stopped a little time whilst I interviewed the court officials and got him out. I don't know what you call it in America.

Q. As a witness?

A. As a witness.

Q. It had nothing to do with your ship?

A. No, nothing whatever; it was his own private interest.

Q. You say at neither of these two ports these men demanded their wages?

A. None, absolutely.

Q. When did you arrive at New York?

A. On the 3rd of April.

Q. Did these men, Lucas and Blixt, or either of them, demand their discharge at New York?

A. They asked for their discharge on their arrival at New York.

51 Q. Shortly after their arrival?

A. Yes.

Q. And why did they ask for their discharge?

A. They didn't give any specific reason why they asked for a discharge; they simply asked for their discharge; asked to be paid off.

Q. Both of them?

A. Yes, both of them. Not together.

Q. At various times?

A. At various times, yes.

Q. What answer did you give these men when they made their request to be paid off?

A. I told them I would not pay them off.

Q. You flatly refused on all occasions to pay them off?

A. Yes.

Q. At Boston and Baltimore?

A. Yes.

Q. And when they made these requests at New York?

A. I again refused them.

Q. How long did these men stay with the ship at New York?

A. They left the ship on the 10th of April.

Q. Did they make any demand for half or any part of their wages?

A. No.

Q. In New York, prior to that date?

A. No. There was no demand made before. The only question that arose in the matter—they wanted their discharge; and I said that I could not give them their discharge; that it would cost me \$20, or even \$25, before the ship went to pay them off. If I paid them off to get substitutes they would have to pay that. They agreed to do so. But I could not accept their agreement until I inquired more carefully into it to see if I was doing right in accepting their proposition.

Q. What did they say?

A. They said could they see the consul. I said they could, and they went and saw the consul.

52 Q. What day was that?

A. That was the 10th.

Q. Have they returned to work for the ship since that day?

A. No. They have not worked since that date. The next day they served this Libel on me. That is all I have seen of them or heard of them.

Q. You say "this libel." Did Blixt come to see you on the 10th of April?

A. He saw me on the 10th of April, yes.

Q. Where did he see you?

A. At my cabin door.

Q. What did he say at that time?

A. He wanted to be paid off; wanted his discharge. I told him it would be \$25. that it would probably cost me—\$25, to get other men. If I could charge them with the \$25 I would pay them off.

Q. Did he say this on the 10th?

A. I said this on the 10th; and I said I was inquiring about it; that when I inquired about the matter and if I could do that, then I would pay them off if they agreed to pay \$25.

Q. Did he serve some paper on you at that time?

A. No paper at all.

Q. Did he leave any paper with you?

A. No, none.

Q. Did he return the following day?

A. The following morning, about 9 o'clock.

Q. What happened at that time?

A. He just put a blue paper on my desk, and said, "There you are, Captain."

Q. (Paper shown witness.) Is this a copy of the paper?

A. Yes, that is a copy of the paper.

Said paper offered in evidence and marked Claimant's Exhibit 1, April 21, 1916.

53 Q. When he left that paper in your cabin what did he say to you at that time?

A. He just put it on my desk and said, "There you are, Captain."

Q. Did he make any demand at that time?

A. No demand, whatever. That was all. He opened my door, as a matter of fact, when I was dressing, and put it over—just passed it into the door on the desk.

Q. Did you have any conversation with either Lucas or Blixt after that?

A. Not a word.

Q. Blixt was not with Lucas at the time when he left the paper, was he?

A. No.

Q. Have the men returned to the ship since that time?

A. They have returned, I understand, but they have not worked.

Q. They have not returned for duty?

A. No. They came and wanted their clothes, and the chief officer would not give them a pass for their clothes. I can't swear if their clothes are in the ship now or not; they were in the other day.

Q. Are you positive, Captain, that at no time, at New York, or the other ports, Baltimore and Boston, these men demanded of you half their wages due at that time?

A. I am quite positive they have not. There has been no demand made on me for wages whatsoever. They have asked for their discharge; but absolutely no demand was made for wages or half their wages.

Q. Did you advance either of these men any money since you were in New York?

A. Yes; they had \$5 on Saturday night following arrival.

54 Q. What was that given them for?

A. That is the usual Saturday night spending money that I serve up to them.

Q. Was that given to all the members of the crew?

A. All members of the crew.

Q. Whether they asked for it or not?

A. Yes. That is a certain open pay day for everybody that wants to get it over Saturday night.

Q. Have you made a memorandum of wages due these men at the present time?

A. Yes.

Q. (Papers shown witness.) Will you look at these slips and say whether those are the memorandums?

A. Yes, those are the memorandums.

Said papers are offered in evidence and marked, memorandum as to Lucas, Claimant's Exhibit 2, and memorandum as to Blixt, Claimant's Exhibit 3, April 21, 1916.

Q. Did Lucas, or Blixt, or both of them, ask for their discharge after the 10th of April?

A. No. I have never seen them since the 10th of April—at least not to speak to them.

Q. At the various times before that date they had asked you for their discharge, had they?

A. Yes.

Q. Did they ask to be paid off and given their discharge?

A. That is it, yes; they asked for their discharge, which is quite understood that when they get their discharge they get their money.

Q. Are you willing now, and have you been willing at any time since you have been in New York, to pay these men half their wages due them?

55 A. I would have paid them half their wages if they had made the specific demand for half their wages; if they had made the demand for half their wages they would have got them.

Q. But they have never made the demand?

A. They have never made demand.

The Articles are marked Claimant's Exhibit 4 for Ident., April 21, 1916.

Cross examination.

By Mr. Axtell:

Q. Do you remember the occasion when you signed Lucas on?

A. Yes.

Q. What time of day was it?

A. About 10 o'clock at night.

Mr. Axtell: Put on the record that the Captain consults the seamen in order to ascertain the facts.

Q. You were down the stream, weren't you?

A. I was in the stream.

Q. You were in a hurry to get off?

A. I was in a hurry to get away.

Q. You had to take your boat out in order to catch the tide without a full crew?

A. Yes.

Q. And then you went ashore?

A. Yes.

Q. To get a man?

A. Two men.

Q. Did you get two men?

A. Yes.

Q. And Lucas was one of them?

A. Yes.

Q. Where is the other one?

A. On board the ship.

Q. What was his name?

A. H. H. L. Lock.

Q. An Englishman?

A. Australian.

Q. Were these men both signed on at the same time?

A. The same time.

Q. Did you make any promise to Lucas that you would pay him off in the states?

A. I did not.

56 Q. No promise at all?

A. No promise at all.

Q. He stated under oath in his testimony the other day (and he is here now, and I have no doubt will so again state under oath), that you did so promise him.

A. I did not.

Q. It is not so?

A. It is not so.

Q. It is true that Lucas demanded his discharge from you just as soon as he got in the States, didn't he?

A. He asked for discharge. Not demanded a discharge. There is a difference between demanding discharge and asking, is there not?

Q. He made a demand upon you to pay him off.

A. He asked his discharge. He signed on the Articles to be paid off by mutual consent. I have got to consent, and he has got to consent. He asked if I consent. I say no.

Q. That is an answer. You have answered the question.

A. All right.

Q. Didn't he tell you at the time of making his request to be paid off that you had promised to pay him off here.

A. No.

The two libelants appear before the Notary, and Mr. Axtell indicates one of them.

Q. This is Lucas, isn't it?

A. Yes.

Q. He didn't remind you of that promise to pay him off in the States when he made his demand in Baltimore and in Boston? Now, looking him in the eye, say so.

A. I am not going to dodge the matter; I am not going to be so criticised.

Q. Come out frank?

A. I am straight.

Mr. Axtell: When I see the captain looking down at the floor——

57 Mr. Potter: Objected to. You have no right to make that remark.

Witness: I believe he has not the right.

Mr. Potter: I object to counsel doing otherwise than asking his questions of the witness.

Witness: I can't remember Lucas asking me; I don't think he did; and I can conscientiously say he didn't ask me.

Q. Do you deny it under oath?

A. Yes, I deny it under oath.

Q. When did you first receive the demand for half wages in New York?

A. I have not received any demand for half wages in New York.

Q. (Claimant's Exhibit 1 shown witness.) When did you first receive this?

A. If it is dated on the 10th I received it on the 11th.

Q. Don't you remember the date?

A. The day following this. I think it was the 11th, I tell you.

Q. What day of the week was it?

A. I would not commit myself by saying what day of the week it was. I don't remember particularly. I received it, I presume, the day after, as I say. There is no date on that. If there was a date on that it would guide me.

Q. Was it this same week or last week?

A. It was last week.

Q. It was 10 days or more ago, was it?

A. It was a week or more ago, I should say, to be more correct and try to save myself.

Q. Was it on Tuesday?

A. I should suppose it was on Tuesday.

Q. About what time in the morning?

A. About 9 o'clock.

58 Q. Had any demands been made upon you for wages the day before?

A. No, not a demand for wages; a demand to be paid off, certainly.

Q. Did Lucas and Blixt come to you again the day before and ask to be paid off?

A. They did.

Q. As you have already testified?

A. As I have testified.

Q. They didn't say anything about half wages?

A. No.

Q. Don't you recall their coming to your cabin early Monday morning and asking you for half their wages?

A. No, I do not. They did not ask for half wages. They asked to be paid off.

Q. If a seaman had come to you and asked for half wages that morning what would you have said to him?

A. I should have probably got advice as to what to do, and told

him in the meantime, as I told these men, that I would see the Consul and see what the Consul would adopt.

Q. You went to the Consul's office after these men had served this paper on you, didn't you?

A. I did.

Q. And what did he tell you about the new seaman's law?

A. He told me that if these men demanded half their wages I was to give it to them; and I was prepared to do so.

Q. After he had told you?

A. Before he told me, before he told me I knew all about that.

Q. You knew all about the law before that?

A. Yes, I knew quite enough about the law to know that if they had made that demand they would have got their money.

59 Q. What did you know about the law?

A. Just that—the matter under discussion.

Q. What is the law?

— The law is that they must make a demand for their money five days after the ship arrives—for half their money due them five days after the ship arrives—and I have to give it to them.

Q. Who told you it was five days after the ship arrives.

A. Mr. Dean.

Q. When did he tell you that?

A. Before the 10th.

Q. Quite certain about that?

A. Quite certain that.

Q. When did your boat arrive?

A. On the 3rd.

Q. No other demands for half wages have been made upon you, have they?

A. None whatever.

Q. Did Fus or J. Smith, quartermaster, ask you for half wages?

A. No.

Q. Have you got such a man on board, a quartermaster named Smith, or a seaman?

A. I was just going to say you have rather got me out—I don't remember the man Smith; I can't remember 75 men; but I know of nobody else that asked me, and that was why I was safe in saying so. I don't see the name Smith in the deck department.

Q. Is there a man named William A. Baldwin on the ship?

A. Yes, here is Baldwin. He is a fireman.

Q. Did he make a demand for half wages of you?

A. No.

Q. Have either of those men been discharged at this port and paid off?

60 A. Smith? I tell you I don't know Smith. Baldwin, he has not. Nobody has been discharged or paid off since the ship arrived. At least, I am wrong. There are three; three men I paid off in New York that I arranged verbally to pay off in Australia.

Q. You did make a verbal arrangement with three men to pay them off here?

A. Yes.

Q. But the other man didn't make this request?

A. No.

Q. It was perfectly easy to go ashore in Australia and get a man to come on board your ship and get him to sign on to be paid off anywhere you wanted to pay him off?

A. Yes.

Q. You could do that without any trouble? Take him off on a tug; and then, in accordance with British law, sign him on for a day or a month?

A. Isn't the man more or less a free agent in the matter? He was not told to come off to me; he volunteered to come off; he waited all day to come off to me, and as a matter of fact he wanted the position.

Q. You went to town——

A. He was notified that the vessel was sailing, and he was told two men were wanted, and he was the man that offered his services. You can't compel men nowadays.

Q. You didn't know that the shipping master had already promised him to be paid off in New York before he waited for you, did you?

A. I did not.

Q. You wanted a man, that was what you wanted, and you were not going to quibble about whether he was paid off in New York or in England, were you, at that time?

A. At that particular time, if he asked me to pay him off in New York, I would have said yes.

61 Q. You would have said anything?

A. Well, I will agree that probably I would under those conditions with the ship hung up.

Q. Have you ever paid men off before and charged them \$25?

A. Never.

Q. You never have?

A. I never have.

Q. You thought this was a good time to begin?

A. I didn't think it was a good time to begin at all. I was trying to get men, I told you, that was all.

Q. Why did you refuse to take the substitute he offered to provide you with for nothing?

A. Who offered to provide?

Q. Lucas.

A. Simply because I couldn't do that and run a ship.

Q. You wanted to get \$25, didn't you?

A. I did not.

Q. Didn't he offer to produce you a man and give him to you for nothing to sign on in his place, and you said, "No, I will take \$25 and get my own man"? Isn't that what you said?

A. I did not.

Q. You deny that, do you?

A. I deny it.

Q. You likewise deny that both of these men came to you on the morning of Monday, the 10th, and made a demand upon you for half their wages?

A. I do.

Q. And you came to the Consul's office after that two days, and were informed of the law on the subject; and now you claim that you knew all about the law before? You claim that under oath, too?

A. I do.

Q. How many men have deserted this ship in the last 8 months?

Mr. Potter: I object to the question as immaterial and irrelevant.

Witness looks at Articles.

62 Witness: 15.

Q. Can you tell me, without figuring very long, how much wages you have turned over to the Board of Trade for those men?

Mr. Potter: Objected to as irrelevant, immaterial and incompetent.

A. I suppose £30 or £40.

Q. I don't suppose you promised any of those men to pay them off before the Articles were up, did you, in order to get them to sign?

Mr. Potter: Objected to as immaterial, irrelevant and incompetent.

A. No.

Q. And you did not make any of the men whom you took in their places any such promise, did you?

Mr. Potter: Objected to as irrelevant, immaterial and incompetent.

Q. Except these three that you paid off?

A. That is quite right.

Q. You keep all your promises?

A. I do.

Q. Why didn't you note your promise in writing on the Articles of the vessel, as required by the British Shipping Laws, if you make such promises intending to keep them?

A. Well, I have a sense of honor; and these men took my word of honor; I have always been faithful to my honor, and I suppose that is why they accepted it.

Q. They knew all about you before they saw you, I suppose?

A. I suppose they took a better view of me than perhaps you have done.

63 Q. Perhaps a better view of you than these two men take?

A. That is right. I am saying——

Q. Or this last one you have had on the ship for 6 months suffering from a festered finger?

Mr. Potter: Objected to as incompetent, irrelevant and immaterial. I object to the entire line of examination.

A. That is quite right.

Q. You have made a correct account of these men's wages, I suppose?

A. I presume so.

Q. It shows a balance of £27.4.7 due Lucas, and £33.3.9 due Blixt?

A. That is right.

Q. These men have made a number of demands upon you for their clothes—upon the mate?

A. That is right.

Q. You refused to deliver their clothes to them?

A. I did.

Q. Do you still do so?

A. Well, I do so pending the present inquiry. If I am asked by you or compelled to give them their clothes I will. I am not going to give them their clothes until I am authorized by my advisers to do so.

Q. Captain, when these demands are made on you to be paid off you don't take them seriously, do you?

A. Well, I will tell you the position I am in. I have got a ship there with 75 of a crew, including myself. This ship is under 12 months' Articles, and we were out 7 or 8 months' time from New Zealand to New York on a two months' passage. You have only got to know sailors—this man Baldwin in particular—and the rest of them. I told him the other day in plain language. "I will give you them if you want clothes; I will give you money; and I have
64 given them; but I can't pay them off; I can't pay them off. I want to be paid off as much as you do."

Q. They are always asking to be paid off?

A. They are always asking to be paid off in every ship in the harbor.

Q. In all ships they are doing so?

A. Nine ships out of 10.

Q. You can't pay very much attention to the exact wording of their demands?

A. They come up and ask you to be paid off, and they want their discharge.

Q. Isn't it a safe proposition that when the men all have come to you and said, "Captain, we want half of our wages," you, thinking that they were just asking for their discharge as usual, told them to get out?

A. I would not put past that proposition. As they themselves put it, I said no, because I am right in saying no.

Q. You didn't know that these men had been to a lawyer's office and had been carefully advised as to just what to say to you?

A. I did not.

Q. You would guard yourself perhaps a little more carefully in your replies, if you have 20 or 30 coming along asking this thing. You will say no?

A. As I said to this man, "There is not a hope in the world."

Redirect:

Q. Captain, you said that two or three of the members of this crew you agreed to pay off in America?

A. That is right.

Q. When you arrived in America did they keep you to your promise?

A. Oh, yes.

Q. And did you pay them off?

A. I paid them off.

65 Q. They have been paid off?

A. They have been paid off. These men asked me the first day we were in about being paid off. I said, "All right. I have given you my word, and you will find that I will keep it. Just wait a few days until I can get settled with my general business, and I will make a point of paying you off." That was three—Larkin, Cox and a man named Lillias.

Q. Did these men, when making their request for discharge at New York, plead for their discharge? They didn't demand it as a matter of right, did they?

Mr. Axtell: Objected to because that question is rankly leading.

A. They did not demand, no; they asked.

Recross:

Q. These three men that you say you paid off, when and where were they signed on? Can't you tell without the Articles?

A. I will tell you. The one man was signed on by myself after leaving Wellington.

Q. Were they all signed on at the same place?

A. No. They are quite distinct. The others were signed on before a shipping master. There was only this man that came on at last and asked for a discharge in America. He wanted to go himself, and that was to get money. I said all right, I will take him, and I gave him a shilling—which is the usual thing for a man asking his discharge.

Q. Do you ever sign your men on before a shipping master or superintendent?

A. Always.

Q. I don't mean shipping master, I mean a consul.

A. Yes, before a consul.

66

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS, Libelant,

against

S. S. "WESTMEATH."

It is hereby stipulated and agreed that the following opinions in adjudicated cases and laws of the Kingdom of Great Britain and Ireland may be introduced and considered as evidence in this case:

Section 221 of the Merchant's Shipping Act of 1894 provides as follows:

"If a seaman lawfully engaged, or an apprentice to the sea service, commits any of the following offences, he shall be liable to be punished summarily as follows:

(a) If he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part of the effects he leaves on board, and of the wages which he has then earned, and also, if the desertion takes place abroad, of the wages he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship to any substitute engaged in his place at a higher rate of wages than the ship stipulated to be paid to him; and also, except in the United Kingdom, he shall be
67 liable to imprisonment for any period not exceeding twelve weeks with or without hard labour;

(b) If he neglects, or refuses without reasonable cause to join his ship, or to proceed to sea in his ship, or is absent without leave at any time within twenty-four hours of the ship's sailing from a port, either at the commencement or during the progress of a voyage, or is absent at any time without leave and without sufficient reason from his ship or from his duty, he shall, if the offence does not amount to desertion, or is not treated as such by the master, be guilty of the offence of absence without leave, and be liable to forfeit out of his wages a sum not exceeding two days' pay, and in addition for every twenty-four hours of absence, either a sum not exceeding six days' pay or any expenses properly incurred in hiring a substitute; and also, except in the United Kingdom, he shall be liable to imprisonment for any period not exceeding ten weeks with or without hard labour."

See also Merchant's Shipping Act of 1906, 6 Edw. 7, Chap. 48.

The Baltic Merchants, 1809, Edw. 86; The Pearl, 5 C. R., 224; The Blake, 1 W. Rob., 73; McLaoughlin's Law of Merchant Ship-
ping, page 249.

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAVE BLIST, Libelants,
against

S. S. "WESTMEATH."

It is hereby stipulated between the respective parties hereto that a copy of the shipping articles certified by the British Consul or Vice-Consul at New York May be substituted for the original articles and marked in evidence herein as claimant's Exhibit 4.

SILAS B. AXTELL,

Proctor for Libellants.

KIRLIN, WOOLSEY & HICKOX,

Proctors for Claimant.

CLAIMANT'S EXHIBIT 1.

April 21, 1916. E. H. C. Sten, N. P.

United States District Court, Eastern District of New York.

PETER LUCAS, Libelant,
against

STEAMSHIP "WESTMEATH," Her Tackle, Apparel, etc., and Owners.

To the Master, Owners, Agents and all others interested in the Steamship "Westmeath:"

Please take notice that a libel is now being filed by the above named libelant in behalf of himself and one other seaman from the Steamship "Westmeath" for services performed in the capacities of firemen, for which they claim wages in the sum total of approximately Two hundred and nin-ty (\$290.00) Dollars; that this action is being taken under Section 4530 of the United States Revised Statutes, Act of Congress of March 4th, 1915.

You will please take further notice that within twenty-four hours after service of this notice upon you, application will be made to the Clerk of the above Court to issue to the United States Marshal of the Eastern District of New York, a monition to attach said vessel and hold her as security for said claim and for such other claims as may subsequently be filed.

G. BLIXT—PETER LUCAS,

By his Proctor, SILAS B. AXTELL,

*Office & Post Office Address: One Broadway,
Borough of Manhattan, City of New York.*

70

CLAIMANT'S EXHIBIT 2.

April 21, 1916.

No. 4.

(Cut.)

E. H. C. Sten, N. P.

F. 1. Account of Wages.

(Sec. 132, M. S. A. 1894.)

Issued by the Board of Trade.

Name of Ship and Official No.: Westmeath 117,381.

Name of Seaman: P. Lucas.

Reference No. in Agreement: 114.

Date wages began: 19/12/15.

Date Wages ceased: 14/4/16.

Total Period of Employment: Months, 3, Days, 27.

Earnings.

3 Months at £10.0.0 per month.....	30 0 0
27 Days at 6/8 per day.....	9 0 0
Increase of wages, on promotion by £— per month for — months — days.	
Overtime —	
Extras —	
Total earnings	39 0 0

Deductions Excluding Allotments.

Date.	Particulars.	Amount.
	Reduction of wages, on disrating by £ — per month for — months — days.....	
	Half Engagement or Discharge Fee Aboard...	
	Advance on joining	
71	Fines	
	Other Cash Advances, Stores, &c., supplied (in order of date)	
	Cash Advanced N. Y. Ports.....	3 0 0
	Cash American Ports	7 14 2
	Tobacco	15 9
	Slops	5 6
	Deduction for Health Insurance, Contributions for — weeks, Cash on leaving Ship —	
	Total deductions, exclusive of Allotments	11 15 5
	Total earnings (as above)	39 0 0
	Total deductions, exclusive of Allotment (as above)	11 15 5
	Balance without deducting Allotments.....	27 4 7
	Allotments	
	Final Balance	£27 4 7

The above Account of Earnings and of Deductions, exclusive of Allotments is correct.

Signature of Master, ———.

Signature of Seaman, ———.

Port —.

Date —.

Money Orders.

Seamen who have friends or relatives residing at a Port in the United Kingdom can send to them any portion of their earnings by means of the Seamen's Money Orders, which may be obtained, free of expense, at any of the Mercantile Marine (Shipping) Offices.

Savings Bank.

Seamen are recommended, when they are "paid off" from their Ships, to take from the pay table a sum of money sufficient only for their immediate expenses, and deposit for safety the remainder of their wages in the Seamen's Savings Bank. They can then withdraw, free of expense, the whole amount of their Deposits at any Port they please, or they can withdraw portions of their money, first at one Port and then at another.

Interest at the rate of 5d. per month is allowed for every £10 deposited.

Full information may be obtained on application to the Superintendent. Mercantile Marine Office, at any Port in the United Kingdom.

73

CLAIMANT'S EXHIBIT 3.

April 21, 1916.

No. 5.

(Cut.)

E. H. C., Sten. N. P.

F. 1.

Account of Wages.

(Sec. 132, M. S. A., 1894.)

Issued by the Board of Trade.

Name of Ship and Official No.

Westmeath, 117,381.

Name of Seaman: G. Blixt.

Reference No. in Agreement: 109.

Date Wages began: 8/12/15.

Date Wages ceased: 14/4/16.

Total Period of Employment: Months, 4; Days, 7.

Earnings.

4 Months at £10. 0. 0 per month	40 0 0
7 Days at 6/8 per day	2 6 8
Increase of wages, on promotion by £— per month for — months — days.	
Overtime	
Extras	
Total Earnings	<u>42 6 8</u>

Deductions Excluding Allotments.

Date.	Particulars.	Amount.
	Reduction of wages, on disrating by £— per month for — months — days	
	Half Engagement or Discharge fee Aboard	
74		
	Fines —.	
	Advance on joining —.	
	Other Cash Advances, Stores, &c., supplied (in order of date)	
	Cash Advanced N. Y.	2 6 6
	Cash American Ports	5 4 2
	Tobacco	14 9
	Slops	17 6
	Deduction for Health Insurance, Contributions for — weeks.	
	Cash on leaving Ship —.	
	Total Deductions, exclusive of Allotments	9 2 11
	Total Earnings (as above)	42 6 8
	Total Deductions, exclusive of Allotments (as above)	<u>9 2 11</u>
	Balance without deducting Allotments	33 3 9
	Allotments —.	
	Final Balance	<u>£33 3 9</u>

The above Account of Earnings and of Deductions, exclusive of Allotments is correct.

Signature of Master, ———.

Signature of Seaman, ———.

Port New York.

Date 14/4/16.

Money Orders.

Seamen who have friends or relatives residing at a Port in the United Kingdom can send to them any portion of their earnings by means of the Seamen's Money Orders, which may be obtained, free of expense, at any of the Mercantile Marine (Shipping) Offices.

Savings Bank.

Seamen are recommended, when they are "paid off" from their Ships, to take from the pay table a sum of money sufficient only for their immediate expenses, and deposit for safety the remainder of their wages in the Seamen's Savings Bank. They can then withdraw, free of expense, the whole amount of their Deposits at any Port they please, or they can withdraw portions of their money, first at one Port and then at another.

Interest at the rate of 5d. per month is allowed for every £10 deposited.

Full information may be obtained on application to the Superintendent. Mercantile Marine Office, at any Port in the United Kingdom.

76

Opinion.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT

vs.

S. S. "WESTMEATH."

August 1, 1917.

Silas B. Axtell, Proctor for Libellants.

Kirlin, Woolsey & Hickox, Proctors for Claimant.

CHATFIELD, J.:

This case has to do with a claim for wages upon the British steamer Westmeath, arriving at the port of New York on April 3 and leaving on April 20.

The libellants are both British subjects, who were obtained in Australia, after the vessel had started to sail and after the firemen had refused to work because they were two men short in the fireroom. The captain agreed to take these men as seamen to the United States, and evidently promised to discharge them in New York upon obtaining substitutes at that port. No mention of this agreement was made in the articles, which were signed in the usual way. At New York both men asked the captain to pay them and sign them off, upon the strength of the oral agreement, and both offered to provide a substi-

77 tute. The captain repudiated the agreement, according to the statements of the libellants. They then went ashore, learned of the provisions of the La Follette Act, went back on board, demanded one-half their wages which was refused, whereupon they left the vessel and were marked off as deserters.

The British Consul had filed a memorandum in the case and objection was immediately raised that the men are governed by British Law as to the entire situation, and that further the La Follette Act does not apply to the situation presented by their demand for one-half wages.

In the case of *Horsford v. Orland* decided in the District of New Jersey it was held that the law of March 4, 1915, applied to American citizens on a British ship but not to British subjects on the same ship.

It would appear that the provisions of the law apply to the vessel and that the U. S. Court has the right to enforce the law. The treaty may or may not have been intended to reserve all rights as to British subjects which were the subject of British Statutes. But Congress has now passed a law which gives a U. S. Statute an effect over British subjects which is not covered by the British law and which must have been intended to supersede the rules governing British vessels under former statutes. The law is to aid American seamen. But they would not be aided if discrimination against British subjects in American ports should result in the stranding of American sailors in foreign ports. The effect of the Act of Congress is a matter perhaps for further treaty but the statement of the law is plain.

78 The dispute as to the oral agreement to terminate the voyage at New York has been waived by the election to demand wages under the La Follette Law and can be left out of consideration.

The libellants may have a decree for full wages.

(Sgd.)

THOMAS I. CHATFIELD,

U. S. D. J.

79 *Final Decree.*

At a Stated Term of the United States District Court held in and for the Eastern District at the Post Office Building in the Borough of Brooklyn, City of New York, on the 19th day of September, 1917.

Present, Hon. Thomas I. Chatfield, District Judge.

PETER LUCAS and GUSTAV BLIXT, Libellants,

against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective

parties and due deliberation having been had and the court having found that the libelants were entitled to receive their full wages, it is now

Ordered, adjudged and decreed by the court that the libelant, Peter Lucas, recover against the S. S. Westmeath, the sum of \$128.89 in wages, and that the libelant Gustav Blixt, recover against the S. S. Westmeath the sum of \$157.24 in wages with costs and disbursements for both libelants taxed at the sum of \$51.90, making in all the sum total of \$338.03 and that the said S. S. Westmeath be condemned to pay the same, and it is

Further ordered that unless an appeal be taken from this decree within ten days, the time limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of said S. S. Westmeath, do cause the engagement of their stipulations to be performed or show cause within four days after the expiration after said time to appeal or on the first day after jurisdiction thereafter why process shall not issue against their goods, chattels and lands for the amount of their said stipulations.

THOMAS I. CHATFIELD,
U. S. D. J.

81 *Notice of Appeal,*

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

SIR:

Please take notice that J. M. Thompson, claimant of the S. S. Westmeath, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the above entitled action on or about the 19th day of September, 1917, in the office of the Clerk of this Court, and from each and every part of said decree, as well as from the whole thereof.

Dated, New York, January 17, 1918.

Yours, etc.,

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

Office and P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

To Percy G. B. Gilkes, Esq., Clerk, and Silas B. Axtell, Esq., Proctor for Libelants, 1 Broadway, New York City.

82

Assignment of Errors.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

The claimant assigns error to the final decision and decree of the District Court in the following respects:

First. The court failed to find that the libelants were deserters.

Second. The court failed to find that the libelants or any of them had deserted before making the alleged demand for one-half wages and had forfeited their wages.

Third. The court failed to find that the libelants had not made any demand for wages in accordance with the terms of the Statute.

Fourth. The court failed to find that as the matters set forth in the libel related to the internal management of a British steamship, the settlement of these matters should have been left to the British Consul at the port of New York in accordance with international comity.

Fifth. The court held that §4530 of the United States Revised Statutes was applicable to this case.

83 Sixth. The court held that §4530 of the United States Revised Statutes did apply, and that said Statute was constitutional.

Seventh. The court failed to enter a decree in favor of the claimant.

Eighth. The court failed to dismiss the libel with costs to the claimant.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

To Silas B. Axtell, Esq., Proctor for Libelants.

84

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

STEAMSHIP "WESTMEATH."

It is hereby stipulated and agreed by and between proctors for the respective parties hereto, that Claimant's Exhibit 4 being certified copy of the articles of agreement, may be omitted from the printed

record on appeal herein, and that the original thereof may be used upon the argument of said appeal with the same force and effect as if they had been made a part of the printed record herein.

Dated, New York, March 13, 1918.

SILAS B. AXTELL,
Proctor for Libelants.
KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

85

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

It is hereby stipulated and agreed, that the foregoing is a true copy of the transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, March 16th, 1918.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Appellant.
SILAS B. AXTELL,
Proctor for Appellees.

86

Clerk's Certificate.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

I, Percy G. B. Gilkes, Clerk of the District Court of the United States of America for the Eastern District of New York, do hereby Certify that the foregoing is a correct copy of the transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Eastern District of New York, this 16th day of March, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the said United States the one hundred and forty second.

PERCY G. B. GILKES,
Clerk.

87

Opinion.

United States Circuit Court of Appeals for the Second Circuit,
October Term, 1918.

No. 25.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,
v.

STEAMSHIP "WESTMEATH," Her Engines, etc., J. M. THOMPSON,
Claimant-Appellant.

Argued March 17, 1919. Decided April 16, 1919.

Appeal from the District Court of the United States for the Eastern
District of New York.

Before Ward, Hough and Manton, Circuit Judges.

Appeal from Decree in Admiralty Entered in the District Court for
the Eastern District of New York.

L. de Grove Potter, for Claimant-Appellant.
Silas B. Axtell, for Libellants-Appellees.

HOUGH, C. J.:

The legal ground-work of this action is identical with that of the
Italian (Opinion filed herewith).

88 At a port in Australia and in December, 1915, Libellants
shipped as members of the crew of the British Steamer West-
meath for a voyage "not to exceed one year." Before that year ex-
pired the Westmeath arrived in the harbor of New York, where she
loaded and discharged, and there the libellants aver they made de-
mand for half wages under R. S. 4530 as amended. This demand
was refused, whereupon this action was brought for full wages, &c.

The libellants had decree below, and as to the facts it is sufficient
to say that the single defense (of desertion) set up in the answer is
not proved. On the contrary we agree with the District Judge that
Libellants' case was proved within the statute.

To grant this decree in favor of foreign seamen against a foreign
vessel solely because such vessel by coming into the harbor of New
York and there unloading and discharging gave to her crew rights
entirely contravening those secured or granted to that crew by British
law,—is now asserted to be such an interpretation of the Seaman's
Act of March 4, 1915 as to render R. S. 4530 as amended unconsti-
tutional.

That the statute impairs, or rather abrogates the foreign seaman's
shipping contract is admitted; but we know of no reason why Con-
gress if so minded may not pass such a statute. "It is no answer (to
a plain congressional declaration) to say that it interferes with the
validity of contracts, for no provision of the constitution prohibits

Congress from doing this, as it does the states" (Mitchell vs. Clark, 110 U. S., at 643).

89 It is, however, urged that any interpretation of the act which enables a seaman on a foreign ship to accomplish that which is embodied in the decree appealed from,—is violative of the fifth amendment in that it interferes "with the liberty to contract on such terms as may be advisable to the parties to the contract," and is therefore "a deprivation of liberty without due process of law";—and for this reliance is placed upon Allgeyer vs. Louisiana, 165 U. S., 578.

In our opinion this very contention was in substance made in Patterson vs. The Eudora, 190 U. S., 169, and there disposed of; and this decision was recently approved in The Talus (S. C. U. S., Dec. 23, 1918).

The employment and discharge, treatment, status and punishment of merchant seamen has long been a part of the regulation of water-borne commerce. With the advisability or expediency of declaring all seamen, irrespective of nationality, to have a status, or be entitled to treatment when within a harbor of the United States totally differing from the treatment or status accorded them in every other part of the world,—we have no concern;—but entertain no doubt of the power of Congress to enact this statute as a commercial regulation.

Decree affirmed with costs.

90

Order for Mandate.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court Rooms in the Post Office Building in the City of New York, on the 26th day of April, one thousand nine hundred and nineteen.

Present:

Hon. Henry G. Ward,
Hon. Charles M. Hough,
Hon. Martin T. Manton,
Circuit Judges.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,

v.

STEAMSHIP WESTMEATH, Her Engines, etc., J. M. THOMPSON,
Claimant-Appellant.

Appeal from the District Court of the United States for the Eastern District of New York.

91 This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with interest and costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.
M. T. M.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Peter Lucas & ano. v. S. S. "Westmeath"—Order for Mandate—United States Circuit Court of Appeals, Second Circuit. Filed April 28, 1919.—William Parkin, Clerk.

92

Clerk's Certificate.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 91 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Peter Lucas and Gustav Blixt, against S. S. Westmeath, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 26th day of May in the year of our Lord One Thousand Nine Hundred and Nineteen and of the Independence of the said United States the One Hundred and forty-third.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

93 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Steamship "Westmeath," her engines, etc., J. M. Thompson, claimant, is appelland, and Peter Lucas and Gustav Blixt are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals

94 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the

United States, the seventeenth day of June, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

95 [Endorsed:] File No. 27,145. Supreme Court of the United States, No. 1059, October Term, 1918. J. M. Thompson, Master, etc., vs. Peter Lucas and Gustav Blixt. Writ of Certiorari. Filed Jun- 26, 1919, William Parkin, Clerk, United States Circuit Court of Appeals, Second Circuit.

96 United States Circuit Court of Appeals for the Second Circuit.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,
against
STEAMSHIP WESTMEATH, Her Engines, etc., J. M. THOMPSON,
Claimant-Appellant.

Stipulation to Return to the Writ.

It is hereby consented that the certified transcript of record in the above suit now on file in the office of the Clerk of the Supreme Court of the United States be taken as a return to the writ of certiorari herein dated June 17, 1919.

Dated, June 24th, 1919.

SILAS B. AXTELL,
Proctors for Libellants and Appellees.
KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant and Appellant.

97 To the Honorable the Supreme Court of the United States,
Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereunto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, July 1st, 1919.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
*Clerk of the United States Circuit Court
of Appeals for the Second Circuit.*

98 & 99 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Peter Lucas vs. S. S. "Westmeath." Return to Certiorari.

100 [Endorsed:] File No. 27,145. Supreme Court U. S. October Term, 1919. Term No. 391. J. M. Thompson, Master, etc., Petitioner, vs. Peter Lucas and Gustav Blixt. Writ of certiorari and return. Filed July 5, 1919.

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SUPREME COURT OF THE UNITED STATES.

J. M. THOMPSON, Master and
Claimant of the Steamship
WESTMEATH, her engines, etc.,
Claimant-Petitioner,

AGAINST

PETER LUCAS and GUSTAV BLIXT,
Libelants-Respondents.

SIR:

PLEASE TAKE NOTICE that the annexed petition for a Writ of Certiorari to the United States Circuit Court of Appeals, for the Second Circuit, will be submitted to the Supreme Court of the United States on the opening of Court on the Second day of June, 1919, or as soon thereafter as counsel can be heard.

Dated, New York, May 17, 1919.

KIRLIN, WOOLSEY & HICKOX,
Proctors for the Petitioner.

TO SILAS BLAKE AXTELL, Esq.,
Proctor for Libelants-Respondents.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1918.

J. M. THOMPSON, Master and
 Claimant of the Steamship
 WESTMEATH, her engines, etc.,
 Claimant-Petitioner,

AGAINST

PETER LUCAS and GUSTAV BLIXT,
 Libelants-Respondents.

PETITION FOR CERTIORARI TO THE CIRCUIT
 COURT OF APPEALS FOR THE
 SECOND CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE
 JUSTICES OF THE SUPREME COURT OF THE UNITED
 STATES:

Your petitioner, J. M. Thompson, claimant of the
 Steamship *Westmeath*, her engines, etc., respectfully
 shows unto this court as follows:

FIRST: Your petitioner, the claimant, at all the times
 herein mentioned was the master of the British Steam-
 ship *Westmeath*. The libelants-respondents were for-
 eign subjects and were members of the crew of the Steam-
 ship *Westmeath*.

SECOND: The libel of Peter Lucas and Gustav Blixt which was filed April 14, 1916, alleges that the libelants, firemen on the British Steamship *Westmeath*, were hired by the master for and during a voyage from Australian ports to New York at certain rates of wages.

That thereafter the vessel arrived at New York, delivered cargo, and on April 8th the libelant Blixt and on April 10th the libelant Lucas made a personal demand upon the master of the vessel for one-half wages then owing them. The demands were refused by the master and that under and by virtue of Section 4530 of the Revised Statutes of the United States the libelants became and were entitled to their discharge and to the full amount of their wages then due and owing.

The libel also demands the value of the libelants' clothing and effects.

The answer of the claimant admits that the libelants signed on the articles of the *Westmeath* and that upon arrival at New York the vessel discharged and loaded cargo. The other material allegations of the libel were denied.

As an affirmative defense it was alleged in the Answer that the *Westmeath* was a British Steamship and that the contract of service entered into between the libelants and the ship was governed by the laws of Great Britain and Ireland and that by virtue of that law the libelants were not entitled to bring a claim for wages.

It is also alleged in the Answer that the contract entered into by these libelants was for a voyage not to exceed one year beginning on August 4th, 1915, and that on April 9th, 1916, the libelants deserted the steamship

Westmeath and thereby forfeited any claim they had for their wages and effects.

THIRD: The British Steamship *Westmeath* left her berth on Sunday morning, December 19, 1915, at Port Pirie, Australia, and proceeded out into the harbor before starting on her voyage. After the vessel had left, the captain found that two firemen had deserted. The other firemen on the ship refused to work unless substitutes were obtained in place of the deserters. The master secured a tugboat, went back to port and procured two substitutes. One of these two men was Lucas, one of the respondents herein, who returned with the captain to the vessel and at once signed the articles.

The ship's articles, which were signed by both the libelants, were opened at Liverpool on August 4, 1915, and bound the men to serve for a voyage not exceeding one year's duration to any ports or places within the limits between 75° North, 60° South Latitude commencing at Liverpool, thence to Australia, New Zealand and/or United Kingdom ports and/or any other ports within the above limits in any rotation to end at any such port in the United Kingdom or Continent of Europe within home trade limits as might be required by the master.

These articles were read to Lucas before he signed them and the chief engineer witnessed his signature.

The Libelant-respondent Blixt signed on the articles at Sydney, Australia, on December 8th before a Government Shipping Officer. He admitted he was regularly signed on and that he understood the articles which he signed.

From New Zealand the vessel with the libelants-respondents aboard proceeded to America, first going to Boston, then Baltimore and lastly New York, where she arrived on April 3rd, 1916. At all these ports the respondents repeatedly asked for their discharge, agreeing to take less than the full amount of wages in consideration of obtaining their discharge.

On or before April 10, 1916, the respondents without permission left the ship and did not return, although the time for which they had contracted to serve had not expired.

FOURTH: The District Court entered a decree for the libelants. As to the application of the Seamen's Act, the District Judge said in his opinion:

"It would appear that the provisions of the law apply to the vessel and that the United States Court has the right to enforce the law. The treaty may or may not have been intended to reserve all rights as to British subjects which were the subject of British Statutes. But Congress has now passed a law which gives a United States Statute an effect over British subjects which is not covered by the British law and which must have been intended to supersede the rules governing British vessels under former statutes. The law is to aid American seamen. But they would not be aided if discrimination against British subjects in American ports should result in the stranding of American sailors in foreign ports. The effect of the Act of Congress is a matter perhaps for further treaty but the statement of the law is plain."

FIFTH: The Circuit Court of Appeals affirmed the Decree of the District Court. The Court in its opinion did not make any mention or discuss the petitioner's contention that Section 4530 of the Seamen's Act should not be construed to apply to foreign seamen shipping on foreign vessels at a foreign port under an agreement valid where made and not to be performed within the United States.

The Court in its opinion held that the act as applied to such a case as this is constitutional on the authority of *Patterson vs. the Eudora*, 190 U. S. 169, and on the ground that the act is a regulation of commerce.

REASONS FOR ALLOWANCE OF WRIT.

1. In this case the respondents entered into a contract before the Seamen's Act became effective as to British vessels, which contract was valid under both British and American law and was made between British subjects to be performed on a British ship for a term not exceeding one year.

If Section 4530 of the Seamen's Act be given extra territorial jurisdiction and made applicable to this case, it would vitiate the valid contract lawfully entered into between the subjects of Great Britain in the territory of Great Britain and not to be performed within the United States.

The only ground on which such a law could be made applicable to such a case as this, would be on the theory that Congress can prescribe conditions affecting the entry of foreign vessels into our ports. This act does nothing of the sort and this Court has so held.

2. If Section 4530 of the Revised Statutes be so construed as to be made applicable to such a case as this, the act would be unconstitutional because

a. The above mentioned section deprives the petitioner of his liberty to contract and is in direct violation of the Fifth Amendment of the Constitution.

b. If in a case such as this where there is a valid contract between the parties for the employment of the respondents by which their wages are not due until the end of the voyage, this section is applicable and if under it and pursuant to its terms foreign vessels are forced and made liable to pay money or wages in violation of the provisions of such valid contract, it would amount to the taking of property from them without due process of law.

This act does not merely impair the obligation or take away the remedy for the enforcement of a contract, but creates a liability on the ship owner in direct contravention to the terms of a legal and valid contract.

2. The questions involved in this case have been frequently before the Federal and State Courts in a very large number of cases since the passage of the act and the various courts have construed the act differently in many respects.

3. The Circuit Court of Appeals for the Fifth Circuit in the case of *Dillon v. Strathearn S. S. Co.*, 248 U. S. 182, certified to this Honorable Court the questions herein involved.

On December 23, 1918, this Honorable Court decided that the case did not comply with the rules of the court and dismissed the certificate.

This Honorable Court granted the petition for certiorari in the case of the *Sandberg v. McDonald, The Talus*, 248 U. S. 185; *Nielsen v. Rhine, Hardy v. Barkentine Windrush*, 248 U. S. 205, which cases involved the construction and application of Section 4529 of the U. S. Revised Statutes, and held in those cases that the prohibition against advances to seamen contained in that section of the Act was not applicable and did not prohibit advances made to foreign seamen on either an American or foreign vessel in a foreign port.

It is of great importance that the questions involved in this case, i. e., the construction, application and constitutionality of §4530 of the Revised Statutes should be adjudicated by this Honorable Court.

WHEREFORE, claimant, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to the Supreme Court for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in the said Circuit Court of Appeals in the said case entitled "Peter Lucas and Gustav Blixt, Libelants-Appellees, against Steamship *Westmeath*, her engines, etc., J. M. Thompson, Claimant-Appellant," pursuant to Section 240 of the Judicial Code, and that the said decree of the said Circuit Court of Appeals in the said case may be reversed by this Honorable Court, and that your petitioner may have such other or further relief or remedy

in the premises as to this Honorable Court may seem meet and in conformity with the said Act.

And your petitioner will ever pray.

L. DEGROVE POTTER, .
Counsel for Petitioner.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Petitioner,
27 William Street,
New York City.

STATE OF NEW YORK, }
County of New York, } ss.:

L. DEGROVE POTTER, being duly sworn, says: That he is one of the proctors for the petitioner herein, and that the foregoing petition is true to the best of his knowledge, information and belief.

L. DEGROVE POTTER.

Sworn to before me this }
17th day of May, 1919. }

WILLIAM C. GODDARD,
Notary Public.

I hereby certify that I have examined the foregoing petition, that in my opinion it is well founded, and entitled to the favorable consideration of the Court, and that it is not filed for purposes of delay.

L. deGROVE POTTER,
Counsel.

SUPREME COURT OF THE UNITED STATES,

J. M. THOMPSON, Master and Claimant of
the Steamship WESTMEATH, her en-
gines, etc.,

Claimant-petitioner,

against

PETER LUCAS AND GUSTAV BLIXT, .
Libelants-respondents.

BRIEF IN SUPPORT OF PETITION.

STATEMENT.

This is an application for a writ of certiorari under and pursuant to Section 240 of the Judicial Code for a review of the decision and decree of the United States Circuit Court of Appeals for the Second Circuit, affirming the decree of the United States District Court for the Eastern District of New York.

The material facts and the questions involved are set forth in the foregoing petition.

Section 4530 of the Revised Statutes, as amended, Act Dec. 21, 1898, C. 28, Sec. 5, and Act March 4, 1915, c. 153, Sec. 4, being part of the so-called Seamen's Act, is as follows:

“§4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-

half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended, every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: *Provided further*, that notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

POINT I.

IT WAS NOT THE INTENTION OF CONGRESS TO ABROGATE THE CONTRACT OF A FOREIGN SEAMAN ENTERED INTO WITH A FOREIGN SHIP OUTSIDE THE JURISDICTION OF THE UNITED STATES.

A. It is a general rule of law that a contract good where made is good everywhere. *Scudder v. Chicago Union National Bank*, 91 U. S. 406.

Statutes cannot be made applicable in such a way as to nullify contracts made between foreigners in a foreign jurisdiction without transcending the legislative powers and jurisdiction of the United States, as was decided in the case of *The Appollon*, 9 Wheat. 362, on page 370, where Mr. Justice Story said, "The laws of no nation can justly extend beyond its own territory except so far as regards its own citizens."

The law of nations is a part of the law of the land and should be followed by the courts of the United States. *The Amelia*, 1 Cranch. 1; *The Charming Betsey*, 2 Cranch. 64, 118; *Holmes v. Jennison*, 14 Pet. 540, 569.

This Court, in the recent case of *Sandberg et al. v. McDonald, steamship Tallas*, 248 U. S., 185, in construing §11 of this same Act, which prohibits advances in wages to seamen, and a sub-division on which reads:

"This section shall apply as well to foreign vessels while in the waters of the United States as to vessels of the United States,"

said at page 195:

“Did Congress intend to make invalid the contracts of foreign seamen so far as advance payments of wages is concerned, when the contract and payment was made in a foreign country where the law sanctioned such contract and payment?”

“Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. *Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States.*” (Italics ours.)

The provisions of §4530 can be allowed ample operation when confined to contracts of seamen on foreign vessels only when such contracts are made while the vessel is in the harbors of the United States and then only to contracts of American seamen.

It is here conceded that the contracts were entered into outside the jurisdiction of the United States, before the act by its terms became effective as to British vessels, and by the terms of the contract no wages were due or to be paid these seamen until the voyage was completed.

In the absence of a clear declaration by Congress of its purpose specifically to annul valid foreign contracts, this Court should not violate the well settled principle

of international comity, which requires it to abstain from interfering with the internal discipline of a foreign ship and the general regulation of the rights and duties of the officers and crew among themselves. *Wildenhus's*, 120 U. S. 1; *Liverpool Co. v. Phoenix Ins. Co.*, 129 U. S. 397; *The Belgenland*, 114 U. S. 355; *The Scotland*, 105 U. S. 24.

In the *Wildenhus* case, 120 U. S. 1, the Supreme Court, considered the question of whether the local authorities had jurisdiction over a crime committed on a Belgian merchant vessel in a port in the United States. Mr. Chief Justice Waite in his opinion of page 12, says as follows:

“From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquility of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemp-

tion from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority. Such being the general public law on this subject, treaties and conventions have been entered into by nations having commercial intercourse, the purpose of which was to settle and define the rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdictions."

B. §4530 does not apply specifically to foreign seamen on foreign vessels. The pertinent part of the statute reads:

"This section shall apply to seamen on foreign vessels while in the harbors of the United States."

This might well be construed to mean American seamen on foreign vessels.

The title or preamble of the Seamen's Act is as follows:

"An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Neither in the Act nor in this title does the Act expressly apply to foreign seamen. It is quite evident it was not the intention of Congress to pass an act for the welfare of foreign seamen, and this Act should not be construed so as to apply to foreign seamen on foreign

vessels temporarily in a harbor of the United States, where such application would conflict with their contractual and statutory obligations.

Under the well-known rules of construction the title of an act or statute may be considered in construing the act or attempting to determine the intent of the Legislature which passed the act. See *Holy Trinity Church v. U. S.*, 145 U. S., 457, 462; also *United States v. Palmer*, 3 Wheat., 610, 631, in which Chief Justice Marshall said:

“The words of the Section are in terms of unlimited extent. The words ‘any person or persons’ are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the Legislature intended to apply them. The title of an Act cannot control its words, but may furnish some aid in showing what was in the mind of the Legislature.”

The great fundamental rule of construing statutes is to ascertain and give effect to the intention of the Legislature, *Schulthis v. McDougal*, 162 Fed. 331, and where the statute has a doubtful meaning, or where adhering to the strict letter would lead to injustice or contradictory provisions, the duty devolves upon the court to ascertain the true meaning. If the intention of the Legislature cannot be discovered, it is the duty of the court to give the statute a reasonable construction consistent with the general principles of law. 36 Cyc. 1107. Every statute should be construed in reference to the object intended to be accomplished by it. In order to ascertain this object, it is proper to consider the occasion and necessity of its enactment.

Considering the defects or evils of the former law and the remedy provided by the new one, the statute should be given that construction which is best calculated to advance its object by suppressing the mischief and securing the benefits intended, and where the proper construction of a statute is doubtful, the question of inconvenience, injustice or prejudice resulting from the proposed construction may be considered. *Knowlton v. Moore*, 178 U. S. 41; *Chinese Laborers*, 13 Fed. 291.

In several cases the courts have considered the preamble and recitals for the purpose of ascertaining the Legislature's intent. *Furman v. N. Y. Sandf.* 16; *Price v. Forrest*, 173 West, 410; *Holbrook v. Holbrook*, 1 Pick. 248; *U. S. v. Webster*, 16 Fed. Cas. 658, 36 Cyc. 1132.

It is the duty of the courts so far as practicable to reconcile the different provisions so as to make them consistent and harmonious. *Morris v. R. R.*, 37 New Jersey Law, 229; *Manuel v. Manuel*, 13 Ohio State, 458; *Ogden v. Strong*, 18 Fed. Cas., 10,460.

If Congress had intended that this Section should apply to foreign seamen on foreign vessels, it seems clear that it would expressly have provided in the Act that it should be applicable. This Section and all the sections of the Act deal with American seamen and make provision for their benefit and safety and if it were intended to make one of the sections of this Act apply to foreign seamen in derogation of their contracts of employment valid where made, it seems clear that the Act would have expressly so stated.

As this Statute is in derogation of the common law, it should be construed strictly. *National Securities Co. v. United States*, 193 U. S. 197, 361; *Cope v. Cope*, 137 U. S.

682, 685; *Fourth National Bank v. Francklyn*, 120 U. S. 747, 753; *Shaw v. Railroad Company*, 101 U. S. 557, 565; *Meister v. Moore*, 96 U. S. 76, 79; *Ransom v. Williams*, 69 U. S. 313, 318. In the last-named case the Court said:

“The statute is in contravention of the common law, and hence to be construed strictly.”

In *Shaw v. Railroad*, the Court said:

“No statute is to be construed as altering the common law, farther than its words impart. It is not to be construed as making any innovation upon the common law which it does not fairly express.”

This Statute is penal and it should be construed strictly for that reason. This has been held in the case of *The Talus the Windrush* and the *Rhine*, 248 U. S., recently decided by this Court.

C. §4530 if applicable to contracts with foreign seamen on foreign vessels entered into outside the jurisdiction of the United States is limited to wages earned by such seamen in an American port and not to wages earned outside the jurisdiction of the United States.

In the case of *Clyma v. S. S. Ixion*, 237 Fed. 142, decided on July 15, 1916, by Judge Neterer of the United States District Court for the District of Washington, it was held on exceptions to the libel, in an action brought by a British subject under §4530 of the Seamen's Act against a British vessel, that the Act was only applicable to wages earned in an American port by a foreign seaman on a foreign vessel.

It is a fair inference from this decision that the Act would not apply to other wages earned outside the American jurisdiction.

POINT II.

IF THE SEAMEN'S ACT BE SO CONSTRUED AS TO APPLY TO THE CASE AT BAR, §4530 WOULD BE UNCONSTITUTIONAL AND A VIOLATION OF THE CONSTITUTION OF THE UNITED STATES.

A. §4530 of the Seamen's Act deprives the defendant of its liberty to contract and is in direct violation of the Fifth Amendment of the Constitution.

By virtue of the Commerce Clause, Congress is empowered to legislate with respect to such matters affecting interstate and foreign commerce as regulation of seamen's contracts of service, but in the exercise of this constitutional power Congress must not in general violate other prohibitions of the Constitution, such as the Fifth Amendment.

It appears to be well settled that the interference with the liberty to contract on such terms as may be advisable to the parties to the contract is a deprivation of liberty, without due process of law. See *Allgeyer v. Louisiana*, 165 U. S., 578.

In that case the prohibition in the State of Louisiana of a person making a contract outside the State of Louisiana under certain circumstances was held to deprive such person of the right to contract which was guaranteed to him by the Fourteenth Amendment.

The Court said, at page 589:

"The liberty mentioned in that amendment (14th Amendment) means not only the right of the citizen to be free from the mere physical re-

straint of his person as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

It is well settled that the phrases in the Fourteenth and Fifth Amendments are construed in the same manner, the Fifth Amendment restricting the Federal legislation and the Fourteenth Amendment restricting the States' legislation in the matter.

It is true that in derogation of the Fifth Amendment Congress may legislate in such a manner as to deprive persons of the liberty of entering into certain contracts, but the justification for such legislation has always been motives of policy based on the exercise of police power. Thus the lottery contract is forbidden to persons. See also *Patterson v. Bark Eudora*, 190 U. S., 169.

In that case the Court passed an act prohibiting the payment of seamen's wages in advance. The seamen in question were paid in advance and later libeled the owners for the full wages without deduction of the advance. A decree was entered for the full amount in their favor. The Supreme Court held that although this congressional prohibition was in derogation of the rights guaranteed to persons under the Fifth Amendment, still it was proper under the guise of the exercise of the police

power. The Court, at page 175, went fully into the consideration of the wrongs which are likely to happen to seamen as a class when they are paid in advance:

“The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea, the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation.”

In order to justify any legislation under the police power it must appear plainly that the legislation has a tendency to rectify the conditions which the legislative body has thought needful of remedying. The Courts will look through the form of any legislative enactment and get at the substance of the matter. In *Booth v. Illinois*, 184 U. S., 425, at page 429, the Court said:

“If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that

certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law. *Mugler v. Kansas*, 123 U. S., 623, 661; *Minnesota v. Barber*, 136 U. S., 313, 320; *Brimmer v. Rebman*, 138 U. S., 78; *Voight v. Wright*, 141 U. S. 62."

The contract is valid here as well as where made and is not in any sense contrary to public policy. This Act even if applicable to a contract entered into before the act became effective does not make the contract unlawful but abrogates or at least impairs its obligations.

It is submitted that Section 4530 does not even attempt to legislate to the benefit of the seaman. It goes directly contrary to the policy of the early act of 1898, which was held constitutional in *Patterson v. Bark Eudora*, *supra*. Under this section the seaman is in no way protected from his traditional traits of throwing away his hard-earned wages in loose living and dissipation in the ports to which his vessel takes him. The right to demand and obtain half of his wages is a temptation to him to go ashore and squander it, and furthermore, during the course of his dissipation also, he is very apt to desert the ship, and in consequence thereof lose half of his wages.

We therefore submit that section 4530 undoubtedly contravenes the Fifth Amendment and cannot be justified as an exercise of police power.

B. Although the Federal Legislature is not prohibited from passing laws impairing the obligation of contracts, it cannot deprive a person of property without due process of law.

In the case of *Hepburn v. Griswold*, 8 Wall., 603, the chief justice, in stating the rule on the subject, said on page 623:

"It is true that this prohibition is not applied in terms to the government of the United States. Congress has express power to enact bankrupt laws, and we do not say that a law made in the execution of any other express power, which, incidentally only, impairs the obligation of a contract, can be held to be unconstitutional for that reason.

But we think it clear that those who framed and those who adopted the Constitution, intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impair the obligation of contracts, is inconsistent with the spirit of the Constitution."

In *McCracken v. Hayward*, 2 Howard, 608, Justice Bradley said on page 612:

“In placing the obligation of contracts under the protection of the constitution, its framers looked to the essentials of the contract more than to the forms and modes of proceeding by which it was to be carried into execution; annulling all state legislation which impaired the obligation, it was left to the States to prescribe and shape the remedy to enforce it. The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution.”

In the *Sinking Fund Cases*, 99 U. S., 700, on page 718, the Court observed

“That the United States are not included within the constitutional prohibition, which pre-

vents states from passing acts impairing the obligation of contracts, but equally with the states, they are prohibited from depriving persons or corporations of property without due process of law."

See Cooley's Constitutional Limitations, 7th Edition, 507, where he lays down the rule or principle known to our system under which private property cannot be taken from one person and transferred to another for the private use and benefit of such other person whether by general law or by special enactment.

In the present case there is a valid contract between the parties for the employment of the respondents by which their wages are not due until the end of the voyage. This contract was made before the act went into effect as to foreign vessels. If the Seamen's Act be applicable and under it the owners of vessels are forced and made liable to pay money or wages in violation of the provisions of a contract, it would amount to the taking of property from them without due process of law.

In this instance, if this Act be applicable to the case at bar, Congress did not merely pass a law impairing obligation of contract which it has a right to do to the extent of taking away the remedy for the enforcement of a contract, but created a liability on the shipowner in direct contravention of the terms and provisions of a legal binding contract and therefore violated the constitution by taking property without due process of law.

If this may be done, there would not be anything to prevent Congress from passing a law providing for the imposition of a fine or penalty on a foreign vessel for an act done wholly within the foreign jurisdiction to be

enforced when the vessel later came within a harbor of the United States.

May 17, 1919.

L. DE GROVE POTTER,
JOHN M. WOOLSEY,
Counsel.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Petitioners.

FILED
NOV 28 1919

JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 391.

J. M. THOMPSON, Master and Claimant of the
Steamship "Westmeath," her engines, etc.,
Claimant-Petitioner,
against

PETER LUCAS and GUSTAVE BLIXT,
Libelants-Respondents.

BRIEF FOR PETITIONER.

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Supreme Court of the United States

J. M. THOMPSON, Master and
Claimant of the Steamship
"Westmeath" Her Engines,
Etc.,

Claimant-Petitioner,

against

PETER LUCAS and GUSTAV BLIXT,
Libellants-Respondents.

October Term
No. 391.

BRIEF FOR THE CLAIMANT-PETITIONER.

Statement.

This case comes here on a Writ of Certiorari to review a decree of the United States Circuit Court of Appeals for the Second Circuit made on the 26th day of April, 1919, which affirmed the decree of Judge Chatfield in the District Court of the United States for the Eastern District of New York whereby it was adjudged that the libellants recover of the claimant certain sums as wages. *Record*, 49, 50, 54.

The libel was brought by Peter Lucas and Gustav Blixt, firemen on the British Steamship *Westmeath*, to recover wages which it is alleged became due because of the refusal of the master to

pay the libelants one-half of the wages due them after demands made upon the master of the *Westmeath* at New York, pursuant to Section 4530 of the Revised Statutes of the United States, which is a part of the so-called Seamen's Act. *Record*, 2, 3.

The claimant answered, pleading that the libelants were not entitled to any wages under the articles, i. e. the contract, and that the libelants had forfeited all claim to wages by their desertion. It was also pleaded that the United States Statutes were not applicable, but that the laws of Great Britain governed. *Record*, 4, 5.

The facts, which are either admitted or found by both the Courts below are as follows:

In December, 1915, before Section 4530 became by its terms effective as to foreign vessels, the libelants, both foreigners, shipped as members of the crew of the British Steamship *Westmeath* at ports in Australia and bound themselves to serve for a voyage not exceeding one year's duration to any ports or places within certain specified limits and to end at any such port in the United Kingdom or the Continent of Europe, within home trade limits as might be required by the master.

After proceeding to Boston and Baltimore where the libelants asked for their discharge, agreeing to take less than the full amount of their wages, the vessel proceeded to New York where Lucas on April 10, 1916, and Blixt on April 8, 1916, made demands for half wages under Section 4530 of the Revised Statutes.

These demands were refused by the master and thereupon this libel was filed on April 14, 1916, by these libelants to recover the full wages earned by them.

The District Court, finding the facts in favor of the libelants and construing the Seamen's Act as applicable to the case, entered a decree for the libelants.

The Circuit Court of Appeals for the Second Circuit, in affirming the decree of the District Court, did not discuss or make any mention of the claimant's contention that the Seamen's Act should not be construed to apply to a contract between foreign seamen on a foreign vessel made and to be performed outside the territory of the United States.

The Court in an opinion reported, 258 Fed., 446, held the Act constitutional, under the authority of *Patterson vs. The Eudora*, 190 U. S., 169, and also considered the Act within the power of Congress as a regulation of commerce.

STATUTE INVOLVED.

Section 4530 of the Revised Statutes, as amended, Act. Dec. 21, 1898, C. 28, Sec. 5 and Act March 4, 1915, C. 153, sec. 4, is part of the so-called Seamen's Act. It reads as follows:

"Sec. 4530. Every Seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five

days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: Provided Further, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And Provided Further. That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

FIRST POINT.

SECTION 4530 OF THE SEAMEN'S ACT SHOULD NOT BE CONSTRUED TO APPLY TO FOREIGN SEAMEN SHIPPING ON A FOREIGN VESSEL UNDER AN AGREEMENT NOT TO BE PERFORMED WITHIN THE UNITED STATES AND THEREBY BE HELD TO ABROGATE A CONTRACT VALID WHERE MADE.

A. This Section is ambiguous and is not expressly applicable to foreign seamen on a foreign vessel.

The ambiguous provision of the Section is as follows:

"This Section shall apply to seamen on foreign vessels while in the Harbors of the United States."

From the language of this provision it is not at all clear whether Congress intended that Section merely to apply,

(1) to American seamen shipping on foreign vessels,

(2) to contracts entered into within the United States,

(3) to that part of the wages earned in the harbors of the United States or, as the Court below apparently found,

(4) to foreign seamen on a foreign vessel temporarily within the harbors of the United States.

The title or preamble of the Seamen's Act is as follows:

"An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Neither in the Act nor in its title does the Act expressly apply to foreign seamen shipped on a foreign vessel in a foreign port. It is quite evident it was not the intention of Congress to pass an act for the welfare of *foreign* seamen, but for the welfare of *American* seamen alone.

It is well settled that the title of a statute may be considered as tending to throw light upon the

Legislature's intention as to its scope and operation. *Holy Trinity Church vs. United States*, 143 U. S., 457, 462; *United States vs. Fisher*, 2 Cranch, 358, 386; *Coosaw Min. Co. vs. South Carolina*, 144 U. S., 550, 563; *Knowlton vs. Moore*, 178 U. S., 41, 65.

In *United States vs. Palmer*, 3 Wheat., 610, Chief Justice Marshall said, at page 631:

"The words of the Section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the Legislature intended to apply them.

The title of an Act cannot control its words, but may furnish some aid in showing what was in the mind of the Legislature."

It is a well recognized rule of construing statutes that where the statute's meaning, as in this case, is doubtful or where as would be the result in this case adhering to the strict letter would lead to injustice or contradictory provisions, the duty devolves upon the court to ascertain the true meaning. If the intention of the Legislature cannot be discovered, it is the duty of the court to give the statute a reasonable construction consistent with the general principles of law and comity. To the same effect is:

Chinese Laborers, In re Ah Tie and others,
13 Fed., 291.

It is a well recognized rule of construction in so far as practicable, to reconcile different provisions so as to make them consistent and harmonious. *Morris vs. Railroad*, 37 New Jersey Law, 229; *Manuel vs. Manuel*, 13 Ohio State, 458; *Ogden vs. Strong*, 2 Paine, 584.

As this Statute is in derogation of the common law it should be construed strictly. *Sanberg vs. McDonald*, 248 U. S., 185; *Northern Securities Co. vs. U. S.*, 193 U. S., 361; *Cope vs. Cope*, 137 U. S., 682, 685; *Fourth National Bank vs. Francklyn*, 120 U. S., 747, 753; *Shaw vs. Railroad Company*, 101 U. S., 557, 565; *Meister vs. Moorsee*, 96 U. S., 76, 79; *Ransom vs. Williams*, 2 Wall., 313, 318.

In *Shaw vs. Railroad* (supra), the Court said, at page 565:

"No statute is to be construed as altering the common law farther than its words import. It is not to be construed as making any innovation upon the common law which it does not 'fairly express.'"

This court in the case of *The Talus*, 248 U. S., 185 and *The Windrush*, 248 U. S., 205, and *The Rhine*, 248 U. S., 205, recently held that this statute was penal and for that reason should be construed strictly.

If Congress had intended that this section should apply to foreign seamen on foreign vessels, temporarily within a harbor of this country in derogation of contracts made on foreign soil, and in contravention of the long established rules of comity and the law of nations it would expressly have provided in the act that it should be so applicable.

This section, and all the sections of the act, deal with *American* seamen and make provisions for their benefit and safety.

As was said in *The Talus* case at page 195.

“Had Congress intended to make void such contracts and payments, a few words would have stated that intention not leaving such an important regulation to be gathered from implication.”

B. The Seamen's Act should not be so construed as to impute to Congress an intention to legislate in violation of international law and comity.

1. It is a general rule of law, well recognized in this country as well as in most other civilized countries, that a contract valid where made is valid everywhere, and should be enforced unless against public policy, natural justice or morality.

In *Story on Conflict of Laws*, Eighth Edition, Section 242, it is said [*Italics ours*]:

“Generally speaking, the validity of a contract is to be decided by the law of the place where it is made, unless it is to be performed in another country; for, as we shall presently see, in the latter case, the law of the place of performance is to govern. If valid there, it is by the general law of nations, *jure gentium*, held valid everywhere, by the tacit or implied consent of the parties. The rule is founded, not merely in the convenience, but in the necessities of nations; for otherwise it would be impracticable for them to carry on an extensive intercourse and commerce with each other. The whole system of agencies, of pur-

chases and sales of mutual credits and of transfers of negotiable instruments, rests on this foundation; and the nation which should refuse to acknowledge the common principles would soon find its whole commercial intercourse reduced to a state like that in which it now exists among savage tribes."

This doctrine has almost universal support. It is well recognized by foreign jurists and writers as well as by our own writers and Judges. *Molin, Comment, ad Consuet. Paris*, tit 1, s. 12, *Bouhier*, c. 21, s. 190, 2 *Boullénios*, obs. 46, p. 458, 2 *Kent Com.*, 457 et seq. *Scudder vs. Union National Bank*, 91 U. S., 406; *Northern Pacific R. R. vs. Babcock*, 154 U. S., 190, *The Antelope*, 10 Wheat., 66; *Texas & Pacific R. R. vs. Cox*, 145 U. S. 593, *Smith vs. Condry*, 1 How., 28, *The China*, 7 Wall., 53, 64; *Dennick vs. R. R. Co.*, 103 U. S., 11, *The Scotland*, 105 U. S., 24, 29; *Huntington vs. Attrill*, 146 U. S., 657; *Wilson vs. McNamee*, 102 U. S., 572; *P. & O. S. N. Co. vs. Shand*, 3 Moore P. C. N. S., 290; *Westlake's Private International Law*; p. 301.

In *Northern Pacific R. R. vs. Babcock*, Mr. Chief Justice White, quoting from the case of *Herrick vs. Minneapolis & St. Louis R. R. Co.*, 31 Minnesota, 11, said at page 198, as follows:

"But it by no means follows, that because a statute of one State differs from the law of another State, therefore it would be held to be contrary to the policy of the laws of the latter State.' Every day our courts are enforcing rights under foreign contract where the lex

loci contractus and *lex fori* are altogether different, and yet we construe these contracts and enforce rights under them according to their force and effect under the laws of the State where made. To justify a court in refusing to enforce a right of action which accrued under the law of another State, because against the policy of our laws, it must appear that it is against good morals or natural justice, or that, for some other such reason, the enforcement of it would be prejudicial to the general interests of our own citizens."

When once the rights and obligations of a particular transaction are fixed, in accordance with the principles of law and policy of the place where they become fixed, it cannot be admitted that these rights and obligations are subject to being varied according to the place or country or time of their enforcement.

This fundamental principle is attributed to Cicero by Mr. Justice Swayne in the opinion of this Court in the case of *Wilson vs. McNamee*, 102 U. S., 572, 574. The enforcement by one sovereign of rights accrued under a valid contract made in the jurisdiction of another sovereign is part of the comity and law of nations.

The law of nations is a part of the law of the land and should be followed by the courts of the United States. *The Amelia*, 1 Cranch., 1; *The Charming Betsey*, 2 Cranch., 64, 118; *Holmes vs. Jennison*, 14 Pet., 540, 569.

The contract involved herein, whereby it was provided that no wages were due the libelants un-

til the completion of the voyage, is not contrary to public policy, good morals, or natural justice. Such a contract is valid under the laws of this country as well as those of Great Britain.

This contract is not contrary to public policy simply because it is in conflict with the provisions of Section 4530 of the Revised Statutes.

Northern Pacific R. R. vs. Babcock, 154 U. S., 190.

In the case of *Sandberg vs. McDonald*, 248 U. S., 185, this Court, considering the application of the present Seamen's Act to advances made to foreign seamen on foreign vessels, said at page 196:

"It is said that the advances in foreign ports are against the policy of the United States and, therefore, not to be sanctioned here. As we have construed this section of the statute, no such policy as to foreign contracts legal where made, is declared."

That class of cases represented by *the Kensington*, 183 U. S., 263, and *Union Trust Co. vs. Grosman*, 245 U. S., 412, on which the decision of the Circuit Court of Appeals in *The Strathearn*, 239 Fed., 583, was based are not applicable to the situation presented here. Those cases simply affirm the well recognized principle that the courts of this country will not affirmatively enforce a remedy under a foreign contract, when against public policy here.

In the case of *Cuba R. R. Co. vs. Crosby*, 222 U. S., 473, Mr. Justice Holmes said at page 478:

"The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. *American Banana Co. vs. United Fruit Co.*, 213 U. S., 347, 356. See *Bean vs. Morris*, 221 U. S., 485, 486, 487. That and that alone is the foundation of their rights."

The Seamen's Act in so far as it is sought to be invoked in this case, does not place any limitation on the enforcement of an obligation but creates a pecuniary right and obligation in contravention of the terms of a valid foreign contract.

2. The Seamen's Act should be so construed as not to give it extra-territorial force or application.

a. It has always been recognized by the courts as well as the executive branch of the Government of this country that the laws and statutes of any State should not be given extra-territorial force and effect. *American Banana Co. vs. United Fruit Co.*, 213 U. S., 347, 356; *Northern Pacific R. R. vs. Babcock*, 154 U. S., 190; *Crapo vs. Kelly*, 16 Wall., 610, 624; *Bank of Augusta vs. Earle*, 13 Pet., 519; *Huntington vs. Attrell*, 146 U. S., 657, 670; *Cuba R. R. vs. Crosby*, 222 U. S., 473; *The Belgenland*, 114 U. S., 355, 370; *La Bourgogne*, 210 U. S., 95, 115; *The Kestor*, 110 Fed., 432, at 494; *The Lamington*, 87 Fed., 752; *Rundell vs. Comp. Gen. Transatlantique*, 100 Fed., 655, 660; *United States vs. Palmer*, 3 Wheat., 610,

631, 634, 643; *United States vs. Klintock*, 5 Wheat., 144; *The Apollon*, 9 Wheat., 332. *The Hamilton*, 207 U. S., 398, 405; *The Scotia*, 14 Wall., 170, 184; *Marshall vs. Murgatroyd*, L. R. (1870), 6 Q. B., 31; *The Titanic*, 233 U. S., 718, 732.

The English rule is laid down in *Lloyd vs. Guibert*, L. R., 1 Q. B., 115, 127; The French rule can be found in *The Dio Adclphi*, Nov., 1879, 91 Jour, du Palais, 1880, pages 603, 609

In *The Appollon*, Mr. Justice Story said at page 370:

"The laws of no nation can justly extend beyond its own territory, except as far as regards its own citizens."

In the case of the *American Banana Co. vs. United Fruit Co.*, 213 U. S., 347, Mr. Justice Holmes said at page 357:

"The foregoing considerations would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' *Ex parte Blain*, *In re Savers*, 12 Ch. Div., 522, 528; *States vs. Carter*, 27 N. J. (3 Dutcher), 499; *People vs. Merrill*, 2 Parker Crim. Rep., 590, 596. Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch."

In *United States vs. Palmer*, 3 Wheat., 610, which involved the construction of a Piracy Act, the Circuit Court of Massachusetts certified amongst others the following question to this Court:

"3. Whether the crime of robbery committed by persons who are not citizens of the United States on the high seas on board of any ship or vessel belonging exclusively and subject to any foreign state or sovereignty or upon the person of any subject of any foreign state or sovereignty not on board of any ship or vessel belonging to any citizen or citizens of the United States, be a robbery or piracy within the true intent and meaning of the said Eighth Section of the Act of Congress aforesaid."

This Court held that the crime of robbery committed by a person on the high seas on board of any ship or vessel belonging exclusively to subjects of a foreign state is not piracy within the true intent and meaning of the Act and is not punishable in the courts of the United States.

Mr. Chief Justice Marshall said, at page 631 :

"The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the Legislature intended to apply them. * * *

The 8th section also commences with the words 'any person or persons.' But these

words must be limited in some degree, and the intent of the Legislature will determine the extent of this limitation. For this intent, we must examine the law. The succeeding member of the sentence commences with the words: 'If any captain or mariner of any ship or other vessel, shall piratically run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars, or yield up such ship or vessel volutarily to any pirate.'

"The words 'any captain, or mariner of any ship or other vessel,' comprehend all captains and mariners, as entirely as the words 'any person or persons,' comprehend the whole human race. Yet it would be difficult to believe that the Legislature intended to punish the captain or mariner of a foreign ship, who should run away with such ship, and dispose of her in a foreign port, or who should steal any goods from such ship to the value of fifty dollars, or who should deliver her up to a pirate when he might have defended her, or even according to previous arrangement. The third member of the sentence also begins with the general words 'any seaman.' But it cannot be supposed that the Legislature intended to punish a seaman on board a ship sailing under a foreign flag, under the jurisdiction of a foreign government, who should lay violent hands upon his commander, or make a revolt in the ship. These are offences against the nation under whose flag the vessel sails, and within whose particular jurisdiction all on board the vessel are. Every nation provides for such offences the punishment its own policy may dictate; and no general words of a statute ought to be construed to embrace them

when committed by foreigners against a foreign government."

This Court in the cases that have come before it has construed the act under consideration as not having any extra-territorial force. *Sanberg vs. McDonald*, *The Talus*, 248 U. S., 185; *The Rhine* and *The Windrush*, 248 U. S., 205.

In the *Talus* this Court held that §11 of the Seamen's Act which forbids the advance payment of any wages to seamen under certain penalties did not apply to advances made to foreign seamen in a foreign port, and limited the operation of the statute to advances made within this country. In the *Rhine* and *Windrush* cases it held that section did not apply to advances made even on American vessels outside of the United States.

Section 11 of the Seamen's Act under discussion in those cases provides in part as follows:

"This section shall apply as well to foreign vessel while in the waters of the United States as to vessels of the United States."

The wording of this provision is substantially the same as the analogous provision of §4530.

In *The Talus*, Mr. Justice Day, delivering the opinion of the Court, said at page 195 [*Italics ours*]:

"While the Seamen's Act of 1915 contains many provisions for the amelioration of conditions as to employment and care of seamen, in the aspect now involved we have called attention to the state of legislation and judicial

decision when that act was passed. *Did Congress intend to make invalid the contracts of foreign seamen so far as advance payment of wages is concerned, when the contract and payment were made in a foreign country where the law sanctioned such contract and payment? Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States. The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that such advancements shall in no cases, except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels while in waters of the United States.' "*

"Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. *American Banana Co. vs. United Fruit Co.*, 213 U. S., 347, 357. In

Patterson vs. Bark Eudora, supra, this court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports.

"In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the provision of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress. *United States vs. Freeman*, 239 U. S., 117, 120. The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States."

To the same effect are:

The Italier, 257 Fed., 712;
The Nigretia, 255 Fed., 56;
The Belgier, 246 Fed., 966;
The State of Maine, 22 Fed., 734.

In an opinion dated August 25, 1915, Mr. Gregory, then Attorney General, ruled that Section 14, of the Act which provides in part as follows: " * * * Provided that foreign vessels leaving Ports of the United States shall comply with the rules herein prescribed, as to life-saving appliances, their equipment and the manning of the same," does not apply to foreign steamers not carrying passengers to or from the United States or the foreign steamers carrying passengers to the United States.

In the case of *The State of Maine* (*supra*), Judge Addison Brown held that the Seamen's Act of 1872, known as the Dingley Act, did not prohibit advances made to seamen in foreign ports. He said at page 735:

"Statutes have no extra-territorial force. The shipment of seamen in a foreign port, and the payment either of advance wages or of bills previously incurred, as in this case, as an advance of wages, are acts done and completed wholly upon foreign soil; and therefore wholly beyond the jurisdiction of this country. If American vessels be treated as a part of the territory of the United States, and within its jurisdiction, though in foreign ports, still, acts like the present, that are not done up ship-

board, but, as I have said, are completed upon and prior to the seamen's coming aboard, and as a means of procuring them to do so, would not be done within the territorial jurisdiction of this country. Every presumption is against the supposition that Congress had any intention to legislate in reference to acts done and completed wholly beyond its jurisdiction. And while Congress might perhaps subject the masters of American vessels upon their return to this country to punishment for acts done upon foreign soil, though such acts were lawful there, still, an intention would not be presumed. Nor is such an intention sufficiently indicated by mere general language that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States. The intention to include acts done on foreign territory would only be inferred from some previous provisions showing an indisputable intention to make the statute applicable to acts committed beyond our territorial jurisdiction. The provisions of this Statute are not of that specific character."

Patterson vs. The Bark Eudora, 190 U. S., 169, is not an authority to the contrary. In that case the seamen shipped at New York, and it does not appear that they were not American citizens. The contract was made within the territorial jurisdiction of the United States, and it is not doubted that this Government may lawfully regulate such contracts, but the United States has no power to regulate contracts lawfully made by foreigners in their own country, and the Court in

the *Eudora* case did not so hold. The Court held that Congress intended "to protect all sailors shipping in our ports." Mr. Justice Brewer said at page 176:

"It may be remarked in passing that it does not appear that the contract of shipment or the advanced payments were made on board the vessel. On the contrary, the stipulated fact is that the 'seamen were engaged in the presence of the British Vice-Consul at the port of New York.' The wrongful acts were, therefore, done on the territory and within the jurisdiction of the United States."

The provisions of Section 4530 may well apply and would have ample operation when confined to contracts of seamen on foreign vessels when such contracts are made while the vessel is in the harbors of the United States, and then only to contracts of American seamen.

This construction seems to have been placed on the statute by Judge Neterer in the case of *Clyma vs. The Ixion*, 237 Fed., 142. In that case it was held on exceptions in an action brought by a British seaman against a British vessel for wages under this section, that the section was only applicable to wages earned in an American port. This interpretation of the Act is in harmony with the well known principles of the construction of statutes which confine their operation to the territorial limits of the sovereign which enacted them.

In *The Italier*, 257 Fed., 712, the Circuit Court of Appeals for the Second Circuit held that the five-day period described by this section of the Statute only begins to run on the arrival of a

foreign vessel in an American port which, in fact, limits the operation of the Statute to wages actually earned in this country.

b. Where a controversy concerning the rights and duties of the crew to the ship or among themselves and not involving a breach of the peace on a foreign vessel on the high seas, or in the port of another country, the law of the flag of the vessel governs the rights and liabilities of the parties just as conclusively as though the controversy had arisen on land within the territorial jurisdiction of the country whose flag the vessel flies, for a ship has long been regarded by the courts and by writers on international law as a floating island of the country to which she belongs. *Wildenhus*, 120 U. S., 1; *Liverpool Co. vs. Phoenix*, 129 U. S., 397; *The Belgenland*, 114 U. S., 355, 369, 370; *The Scotland*, 105 U. S., 24, 29; *In re Ross*, 140 U. S., 452; *Patterson vs. Bark Eudora*, 190 U. S., 169, 176; *Wilson vs. McNamee*, 102 U. S., 572; 574; *The Hamilton*, 207 U. S., 398; *Dicey, Conflict of Laws*, 2nd Ed., §663; *Wharton, Conflict of Laws*, §473; *Minor, Conflict of Laws*, §195.

Statements of this doctrine by foreign jurists and text writers are frequent: *Bluntschli*, §317; 1 *Calvo Droit International* (4th Ed.), 552; Book VI, Sec. 3; *Rutherford*, II, c. 9.

In the case of *The Wildenhus*, 120 U. S., 1, the Supreme Court considered the question whether the local authorities had jurisdiction over a crime committed on a Belgian merchant vessel in a port of the United States. Mr. Justice Waite in discussing this subject, said at page 12:

"From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquility of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority. Such being the general public law on this subject, treaties and conventions have been entered into by nations having commercial intercourse, the purpose of which were to settle and define the rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdictions."

In *Wilson vs. McNamee*, 102 U. S., 572, 574, the laws of New York were deemed to follow a New

York pilot boat beyond the territorial waters of New York with reference to the rights of the pilot's employment.

In *The Hamilton*, 207 U. S., 398, the death Statute of Delaware was applied to loss of life in a collision on the high seas between two vessels owned by corporations of that State.

This rule of international law and comity has been adhered to by the executive branch of this Government. *Moore, International Law Digest*, Vol. 2, §§204, 207.

Regarding the enforcement of the Canadian Shipping Act of 1870 and its enforcement as affects American vessels, Mr. Bayard, Secretary of State, wrote to Mr. White, Charge d'Affairs at London, on March 1, 1889, For. Rel. 1889, 447, as follows:

"By Section 126 of the Canadian Seaman's Act of 1876 the requirement of shipment of crews before a Canadian shipping master is extended to the shipping of seamen on foreign vessels; but there is a saving clause in favor of vessels belonging to countries between which and Great Britain there is a treaty to prevent such extension. * * *

"Being so instructed the consul (American) on a recent occasion shipped seamen on an American vessel at his consulate in accordance with the laws of the United States; objection was made by the Canadian shipping master, who claimed the sole right to ship the seamen under Canadian articles, whereupon the consul informed him of the instructions he had received from this department to abstain

in future from authenticating such articles.

"This announcement called forth the letter from the shipping master to the consul of the 21st ultimo, inclosed in the latter's dispatch of the 22d the same month, in which the shipping master informs the consul that if hereafter seamen required for American vessels are not shipped in the former's office he shall be obliged to take such legal steps as will enforce compliance with the Canadian act as applied at the port of St. John.

"Under these circumstances, and as the subject is one of wide-spreading importance, I deem it expedient to bring the matter to the attention of Her Britannic Majesty's Government with a view to secure corrective action in the premises without waiting for a case of controversy to arise.

"It is believed to be an accepted doctrine that the right of a vessel to be governed in respect of her internal discipline by the laws and regulations of her own country is not forfeited by her entrance into the port of a foreign country. The position of the Canadian Government in regard to the shipment of seamen at St. John would not only deprive a vessel of that right while in that port, but would by necessary consequence destroy the right until she had shipped another crew in another port, under the laws and regulations of her own country, for which in the meantime would be substituted the laws and regulations of the Dominion of Canada.

"While under a strict construction of the terms of Sections 4511 and 4512 of the Revised Statutes shipments of seamen on foreign vessels in ports of the United States might be required to be made before United States shipping commissioners, yet I am informed by the Treasury Department that the law has never been so applied, and that such shipments have invariably been allowed to be made before the foreign consular officer in accordance with foreign regulations, on the ground that such action was demanded by international comity. This Government, however, expects and requires reciprocal treatment for its vessels in the ports of other countries, and the Treasury Department does not at present recall any instance other than that now under consideration in which such reciprocal treatment is not accorded.

"It is hoped that Her Majesty's Government will take the necessary measures to secure such treatment for American vessels in Canadian ports.

"You will communicate a copy of this instruction to Her Majesty's Government."

Inasmuch as the intention of Congress is not clearly stated in the provisions of the Act, it is submitted that this Court should confine the operation of §4530 to the territorial limits of the United States, and hold it inapplicable to foreign seamen serving on foreign vessels under a contract lawfully made in a foreign country; and should not so construe the general language of the statute as

to impute to the legislative body an intent to regulate rights and obligations beyond the boundaries of the nation or state from which such legislative body derives its authority.

The respondent's brief in the court below contained elaborate quotations from the Congressional Record for the purpose of showing that it was the intent of Congress to make this Section applicable to such a case as this.

We presume the same point will be urged here.

The reports of Committees are cited to show this intent.

It does, however, appear from the Congressional Record that there was considerable debate in Congress as to the application of this Act to foreign vessels. Opposition was advanced by members of Congress on the ground that such an application would be a violation of International Law and that it was doubtful whether Congress had such power.

In the Second Session of the Sixty-third Congress the majority report of the House of S. 136 stated in part as follows:

"It should be stated that the Committee are not unanimous in making this provision apply to foreign ships.

Some members of the Committee doubt our right and the wisdom of making it apply to foreign ships, and question its value to our merchant marine."

In the Third Session of the Sixty-second Congress, in presenting a report from the Committee on Commerce to the Senate, Senator Burton said:

“* * * We do not believe that we have any right to interfere with the management of foreign ships and articles signed abroad.”

While the history of a statute from the time it is introduced until it is finally passed may afford some aid to its construction, the views and votes of individual members expressed in debate are not legitimate aids to its construction. *United States vs. Union Pacific R. Co.*, 91 U. S., 72; *Holy Trinity Church vs. United States*, 143 U. S., 457, 464; *United States vs. Trans Missouri Freight Assn.*, 166 U. S., 290, 318; *Johnson vs. Southern Pacific Co.*, 196 U. S., 1; *Downe vs. Bidwell*, 182 U. S., 244, 254.

However, it has been held by this Court in the case of *Lincoln vs. United States*, 202 U. S., 484, that where an act of Congress is passed over opposition of a minority, as in this case, it is to be considered that the words of the Act represent all the majority deemed it safe to ask.

In that case Mr. Chief Justice Fuller said at page 498:

“Moreover, the Act of July, 1902, was passed with full knowledge and after careful consideration of the decision of this Court, and Congress was aware that grave doubt, at least, had been thrown upon its power to ratify a tax under circumstances like the present. * * *

“It should also be remembered that there was a powerful opposition in Congress and

that the phraseology of the act probably represents all that it was deemed safe to ask. Every consideration requires that the ambiguous language of the act should not be stretched beyond the exact and literal meaning of the words. * * *

This rule is particularly applicable here where the Congressional Record shows there was much opposition in making this Act applicable to foreign contracts of foreign seamen on foreign ships.

It therefore is submitted that Congress did not intend to give the Act a broader application than given by the literal meaning of the words, where to do so would violate the rule of International Law and comity, and perhaps given it an application in excess of the power of Congress.

POINT TWO.

IF SECTION 4530 OF THE SEAMEN'S ACT BE APPLICABLE TO THE CASE AT BAR IT IS UNCONSTITUTIONAL.

A. If the provisions of this section which do not specifically apply to foreign seamen of foreign vessels are construed by this Court to apply to the case at bar, the effect of such a construction would be tantamount to holding that Congress may legislate as to contracts made on foreign soil and affecting only foreigners.

Part of Section 4530 provides: "And all stipulations in the contract to the contrary shall be void."

The contract with the libelants was made at a port of Australia and if the words quoted are held to apply to the contract, this Court will be sanctioning interference by Congress with the law of a foreign friendly power. That Congress possesses any such power has been denied by this Court in the case of *The Apollon*, 9 Wheat 362, where, in holding that statutes cannot be made applicable in such a way as to nullify contracts made between foreigners in foreign jurisdiction without transcending the legislative powers and jurisdiction of the United States, Mr. Justice Story said:

"The laws of no nation can justly extend beyond its own territory except so far as regards its own citizens."

The Constitution of the United States is a grant of power and the various departments of the Fed-

eral Government possess only those powers which are expressly or impliedly conferred on them by the Constitution. *South Carolina vs. United States*, 199 U. S., 437. By no possible stretch of the power to regulate commerce conferred on Congress by the Constitution, can it be said that Congress possesses the power to regulate contracts of foreign shipowners and foreign seamen made in Australia.

In the case of *Brown vs. Duchesne*, 19 How., 183, Chief Justice Taney said, at page 198:

"Congress may unquestionably, under its power to regulate commerce, prohibit any foreign ship from entering our ports * * * or may prescribe the terms and regulations upon which such vessels shall be allowed to enter. Yet it may be doubted whether Congress could by law confer on an individual or individuals, a right which would in any degree impair the constitutional powers of the legislative or executive departments of the Government or which might put it in their power to embrarras our commerce and intercourse with foreign nations or endanger our amicable relations."

B. §4530 of the *Seamen's Act* deprives the defendant of its liberty to contract and is in direct violation of the Fifth Amendment of the Constitution.

By virtue of the Commerce Clause, Congress is empowered to legislate with respect to such matters affecting interstate and foreign commerce as regulation of seamen's contract of service, but in

the exercise of this constitutional power Congress must not in general violate other prohibitions of the Constitution, such as the Fifth Amendment.

It appears to be well settled that the interference with the liberty to contract on such terms as may be advisable to the parties to the contract is a deprivation of liberty, without due process of law. *Allgeyer vs. Louisiana*, 165 U. S., 578.

In that case the provision of an Act of Louisiana that any person, firm or corporation * * * who, in any manner whatsoever does an act in that state to effect for himself or for another insurance on property then in that state in any marine insurance company which has not complied in all respects with the laws of the state shall be subject to fine, was held a violation of the Constitution of the United States, when applied to a contract of insurance made in the State of New York with an insurance company of that State, where the premiums were paid and where the loss was to be paid.

The Court said, at page 589:

"The liberty mentioned in that amendment (14th Amendment) means not only the right of the citizen to be free from the mere physical restraint of his person as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation and for that purpose to enter into all contracts which may be proper, necessary and essential to his carry-

ing out to a successful conclusion the purposes above mentioned."

It is well settled that the phrases in the Fourteenth and Fifth Amendments are construed in the same manner, although the Fifth Amendment restricts the Federal legislation and the Fourteenth Amendment restricts the legislation of the States.

It is true that in derogation of the Fifth Amendment Congress may legislate in such a manner as to deprive persons of the liberty of entering into certain contracts, but the justification for such legislation has always been motives of policy based on the exercise of police power.

In *Patterson vs. The Bark Eudora*, 190 U. S., 169, relied on by the court below the Court considered the act prohibiting the payment of seamen's wages in advance. The seamen in question were paid in advance and later libeled the owners for the full wages without deduction of the advance. A decree was entered for the full amount in their favor. The Supreme Court held that although this congressional prohibition was in derogation of the rights guaranteed to persons under the Fifth Amendment, still it was proper under the guise of the exercise of the police power. The Court, at page 175, went fully into the consideration of the wrongs which are likely to happen to seamen as a class when they are paid in advance:

"The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such

wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea, the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

In order to justify any legislation under the police power it must appear plainly that the legislation has a tendency to rectify the conditions which the legislative body has thought it needful to remedy. The courts will look through the form of any legislative enactment and get at the substance of the matter.

In *Booth vs. Illinois*, 184 U. S., 425, for example, at page 429, the Court said:

"If looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say

that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law. *Mugler vs. Kansas*, 123 U. S., 623, 661; *Minnesota vs. Barber*, 136 U. S., 313, 320; *Brimmer vs. Rebman*, 138 U. S., 78; *Voight vs. Wright*, 141 U.S., 62."

The contract in question here is valid here as well as where it was made and is not in any sense contrary to public policy.

It is submitted that Section 4530 does not even attempt to legislate to the benefit of the seaman. It goes directly contrary to the policy of the early act of 1898, which was held constitutional in *Patterson vs. The Bark Eudora*, *supra*.

Under this section the seamen is in no way protected from his traditional traits of throwing away his hard-earned wages in loose living and dissipation in the ports to which his vessel takes him. The right to demand and obtain half of his wages is a temptation to him to go ashore and squander it, and furthermore, during the course of his dissipation also, he is very apt to desert the ship, and in consequence thereof lose half of his wages.

The right to demand payment of half wages at every port of discharge, in disregard of the articles, might lead to desertion by the whole crew immediately upon the vessel's arrival; and, as seamen could not be reshipped on the next ensuing voyage until the ship was ready to sail, vessels would be deprived of the assistance of their crews in ports and discipline impaired, if not destroyed.

Owing to the extraordinary conditions in ship-

ping arising from the war, there is no reliable basis as yet for an opinion that the Seamen's Act has affected commerce or in any legitimate way benefited seamen, except by the abolishment of imprisonment for desertion. It has, indeed, enabled them to desert with a smaller pecuniary loss than formerly had been involved; but whether this has been of advantage to them may be seriously doubted.

It is a fact that the wages of seamen have advanced since the Act was passed, but probably the advance was due to war conditions rather than to the statute.

Great embarrassment, on the other hand, has been caused to ship-owners. Innumerable protests have been sent by ship-owners to Members of Congress and the executive branch of the Government.

Chambers of Commerce and commercial organizations throughout the country have protested against the Act and have passed resolutions urging its repeal.

The only effect that the Act has produced up to the present is that seamen on incoming vessels habitually demand one-half wages under the Act immediately upon arrival, and leave the ship at once. Crews are constantly changing, discipline is impaired, and unnecessary expenses are incurred.

However, whatever may be said as to the effect of the Act on our commerce, it is clear that Section 4530 in so far as it applied to foreign seamen on foreign vessels temporarily coming into our harbors, is not within the power of Congress as a regulation of commerce.

C. *Although the Federal Legislature is not prohibited from passing laws impairing the obligation of contracts, it cannot deprive a person of property without due process of law.*

In the case of *Hepburn vs. Griswold*, 8 Wall., 603, the Chief Justice, in stating the rule on the subject, said, on page 623:

"It is true that this prohibition is not applied in terms to the government of the United States. Congress has express power to enact bankrupt laws, and we do not say that a law made in the execution of any other express power, which, incidentally only, impairs the obligation of a contract, can be held to be unconstitutional for that reason.

But we think it clear that those who framed and those who adopted the Constitution, intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impairs the obligation of contracts, is inconsistent with the spirit of the Constitution."

In *McCracken vs. Hayward*, 2 Howard, 608, Justice Bradley said, on page 612:

"In placing the obligation of contracts under the protection of the constitution, its

framers looked to the essentials of the contract more than to the forms and modes of proceeding by which it was to be carried into execution; annulling all state legislation which impaired the obligation, it was left to the States to prescribe and shape the remedy to enforce it. The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution."

In the *Sinking Fund Cases*, 99 U. S., 700, on page 718, the Court observed:

"They (the United States) are not included within the constitutional prohibition which prevents states from passing laws impairing the obligation of contracts, but equally with the states, they are prohibited from depriving persons or corporations of property without due process of law."

See Cooley's *Constitutional Limitations*, 7th Edition, 507, where he lays down the rule or principle known to our system of law under which private property cannot be taken from one person and transferred to another for the private use and benefit of such other person whether by general law or by special enactment.

In the present case there is a valid contract between the parties for the employment of the respondents by which their wages are not due until the end of the voyage. This contract was made before the act went into effect as to foreign vessels. If the Seamen's Act be applicable and under it the owners of vessels are forced and made liable to pay money or wages in violation of the provisions of a contract, it would amount to the taking of property from them without due process of law.

In this instance, if this Act be applicable to the case at bar, Congress did not merely pass a law impairing the obligation of a contract which it has a right to do to the extent of taking away the remedy for the enforcement of a contract, but created a liability on the shipowner in direct contravention of the terms and provisions of a legal binding contract and therefore violated the constitution by taking property without due process of law.

If this may be done, there would not be anything to prevent Congress from passing a law pro-

viding for the imposition of a fine or penalty on a foreign vessel for an act done wholly within the foreign jurisdiction to be enforced when the vessel later came within a harbor of the United States. November, 1919.

LAST POINT.

THE DECREE OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT SHOULD BE REVERSED AND THE LIBEL DISMISSED.

Respectfully submitted,

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant-Petitioner.

L. DEGROVE POTTER,
JOHN M. WOOLSEY,
of Counsel.

Office Supreme Court, U. S.
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Supreme Court of the United States

J. M. THOMPSON, Master and
Claimant of the Steamship
Westmeath, her engines, etc.,
Claimant-Petitioner,
against

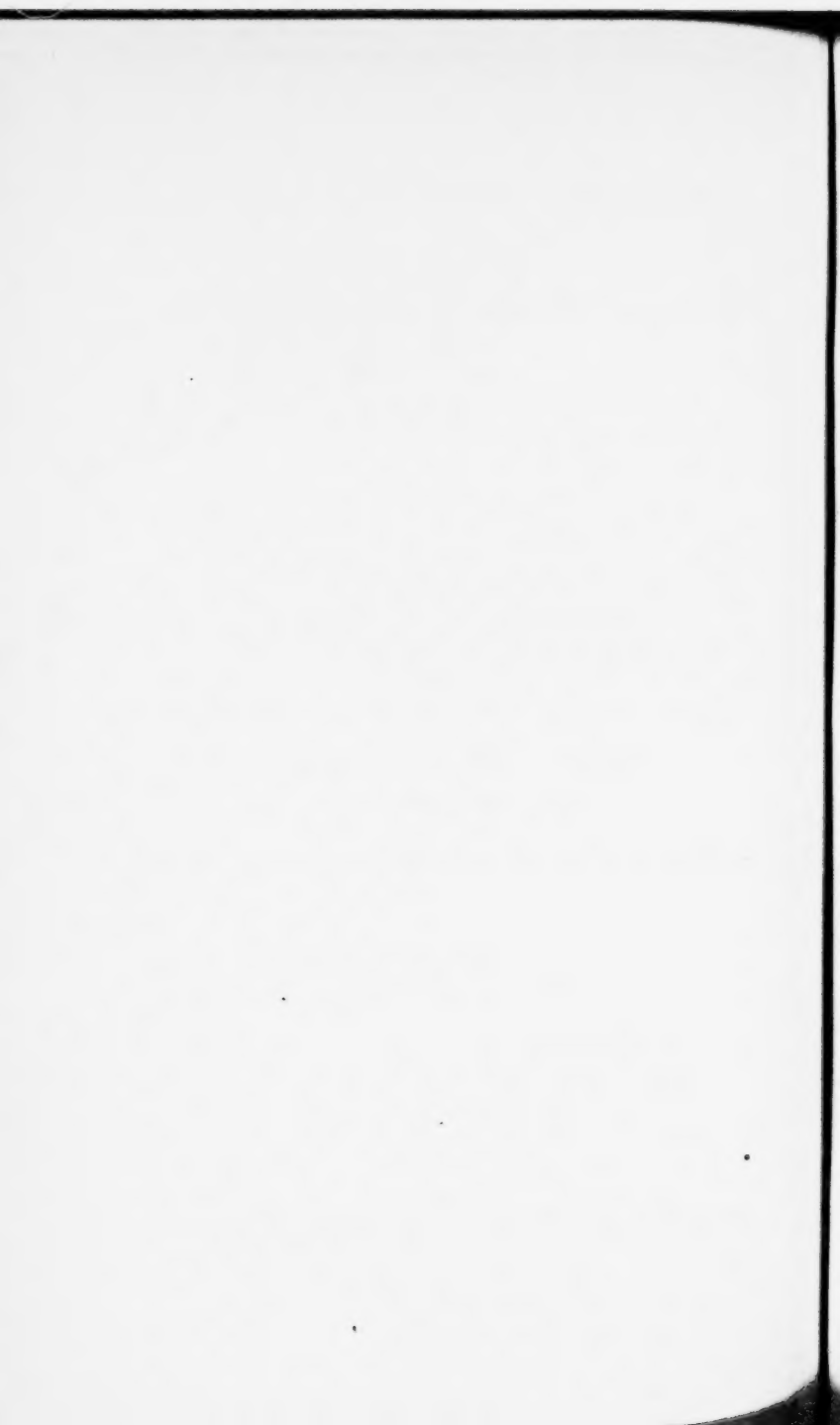
October Term
No. 391.

PETER LUCAS and GUSTAV BLIXT,
Libelants-Respondents.

BRIEF FOR LIBELANTS- RESPONDENTS.

SILAS B. AXTELL,
Proctor for Libelants-Respondents.

W. J. WAGUESPACK,
New Orleans, La.
Of Counsel.



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Supreme Court of the United States

J. M. THOMPSON, Master and
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against

October Term
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PETER LUCAS and GUSTAV BLIXT,
Libelants-Respondents.

BRIEF FOR LIBELANTS- RESPONDENTS.

Statement.

The facts have been correctly stated by the claimant-petitioner and will not be repeated here. Neither seaman was an English subject. There is no need for further comment, except to say that the only material difference in the situation here and that existing in the *Dillon-Strathearn* case is that the seamen in this case entered into the contract before the Seamen's Act had gone into effect, whereas in the former case the contract was made after the act was in effect, to wit, March 4,

1916, as to foreign vessels, of which the *Westmeath* was one. The contract in the *Dillon-Strathearn* case was made in May, 1916; in the present case in December, 1915.

The demand for half wages, on which this action is based, was made at New York in April, 1916. It may or may not be considered of importance, but the record shows that the captain of the *Westmeath* expected at the time of hiring the men in Australia to bring the ship to America. (See Findings of Fact by District Judge Chatfield, fol. 76.)

"The captain agreed to take these men as seamen to the United States and evidently promised to discharge them in New York upon obtaining substitutes at that port."

The questions of law, therefore, if there are any, are the same as in the *Dillon-Strathearn* case, except as to the five-day clause. First, is the section intended to affect foreign seamen on foreign ships? Second, is it enforceable against foreign vessels? Third, does the fact that the contract was entered into before the act was actually in effect, but after it was passed, when the parties contemplated coming within the jurisdiction, make any difference? We would answer the first two in the affirmative and the third in the negative.

POINT I.

Section 4530 means what it says. Seamen on foreign vessels while in ports of the United States have a right to receive half the wages standing to their credit, and the Courts of the United States are open to them for collection.

If Congress did not mean this, when it said it, why did they take the trouble to direct the President to abrogate all treaties which might interfere with the enforcement of the act? It was not necessary to abrogate treaties in order to extend these rights to seamen on American vessels, for there were no treaties interfering with our control of *our* seamen.

Section 16 of the Seamen's Act reads:

"SEC. 16. That in the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries, and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and the Territories and possessions thereof, and for the co-operation, aid and protection of competent legal authorities in effecting such arrest or imprisonment and any other treaty provisions in conflict with the provisions of this Act, ought to be terminated, and to this end the President be, and he is hereby requested and directed, within ninety days after the passage of this Act, to give notice to the sev-

eral governments, respectively, that so much as hereinbefore described of all such treaties and conventions will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions."

If there had been any question about the intent of Congress, the language of this section of the act would clarify it, for it necessarily includes foreign seamen and officers who may be charged with desertion in American ports.

It must be concluded that the act does mean *foreign* vessels, for it says foreign vessels, and a British vessel was a foreign vessel in April, 1916.

As to what the word "seamen" means, this part of the statute is fully discussed in libelants' brief in the *Dillon-Strathearn* case, Point I.

Cases relied on as to interpretation are:

U. S. v. Fisher, 2 Cranch., 352-366;
U. S. v. O. & C. Ry. Co., 164 U. S., 526-541;
Cornell v. Coyne, 192 U. S., 418-430;
Hamilton v. Robertson, 175 U. S., 414-421.

The majority and minority report, Merchant Marine and Fisheries, S. 136, 63rd Congress, Second Session, 852, page 10, quoted on pages 8 and 9 of our brief in the *Dillon-Strathearn* case.

This understanding was had by the United States Circuit Court of Appeals and the Trial Court in this case, as well as in the *Dillon-Strathearn* case, and was likewise applied by the Federal Courts in the following instances:

Ivertson, 237 Fed., 498;
London, 241 Fed., 863;
Meteor, 241 Fed., 735;
Talus, 242 Fed., 954;
Delagoa, 244 Fed., 835;
Lucas v. Westmeath;
Dillon v. Strathearn.

The power of Congress to do what it has done, and the intent to affect foreign vessels being evident, counsel for the ship endeavors to urge that an interpretation suggested in the language of Judge Neterer in *The Ixion*, 237 Fed., 142, would be more appropriate here, because it is less disruptive of foreign commerce.

The decision of Judge Neterer referred to was the first reported case of the enforcement of Section 4530. While Judge Neterer did not go into the matter fully, he held that surely the statute gives the seaman a right to half the wages earned while the vessel was actually in the waters of the United States. His decision had the effect, however, of giving them all the wages they had earned since the commencement of the voyage. So the decree, as enforced, was the same as it would have been had it been enforced against an American ship. Still they argue that our Courts should apply the act as to foreign ships, so as to give the seaman a right to demand only that portion of the wages which are earned while the vessels are actually in the jurisdiction of the United States. Such a meaning has never been suggested for the statute during all the 129 years of its existence (1790). The seamen on American vessels have been accustomed up to this time to receiving a portion of their wages in foreign as well as domestic ports

and have received one-half the wages due them and unpaid at the time of demand. Such a meaning is, we believe, the right one, as stated by Judge Van Fleet in the *Iverson* case, 237 Fed., 500:

"While, somewhat awkwardly expressed, what the statute really means, I think, is that, deducting previous advances, the seaman shall be entitled to receive one-half of the balance of any wages earned and remaining unpaid at the date of demand. In this view the purser's computation would not result in ascertaining correctly the half of the wages then earned. The entire wages earned by petitioner up to that date was \$47.99. He had been paid at Sydney \$14.80. This left on the date in question the sum of \$33.19 earned over and above the previous payment, one-half of which was \$16.59. This latter sum constituted one-half of petitioner's wages earned and unpaid up to that date. That this is the correct construction, is I think, borne out by the section as it stood before amendment. It then provided (Act of 1790):

(Act of 1790)

'Every seaman shall be entitled to receive from the master of the vessel to which he belongs, one-third part of the wages which shall be due to him at every port where such vessel shall unload and deliver her cargo before the voyage is ended, unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast is fully discharged at the last port of delivery, he shall be entitled to the wages which shall be then due.'

Quite clearly under that language the wages due would be the sum to be paid the seaman if the shipping articles actually terminated at the intermediate port. Strictly speaking, the wages were not 'due' at the intermediate port, as only one-third, as the

statute then stood, was payable at that time. Evidently it was for this reason that, when the section was amended, the words 'which he shall have then earned' were substituted for the word 'due.' But that Congress did not intend to change the relative amount made payable to the seaman is evident, when it is considered that under the method of computation adopted by the purser only comparatively insignificant sums would be payable at the second or any other intermediate port at which the vessel should subsequently touch. The purser began his halving process a step too soon." (This language is found on page 500.)

Counsel for the ship urges that Section 4530, when applied to foreign seamen on foreign vessels, be given as limited a meaning as possible, for the reason that the act was opposed by a minority in Congress.

We are not impressed with the cases cited. It seems to be a veiled attempt to induce this Court to usurp the province of the Legislature, by leaving out of the act something that has distinctly and deliberately (considering divergence of opinion in Congress as to expediency) been placed there by the Legislature.

The debates in Congress, if they indicate anything, prove that there was a meeting of the minds on the purpose, as well as the effect, of this legislation. It is conceded that the effect of the Seamen's Act is revolutionary. It gives to a great class of workers a degree of self-control that they never enjoyed before. It gives it to them in all ports of the world on vessels of the United States, and on foreign vessels while here. The economic effect will, in time, free them everywhere, and who says they should not be free?

The act must be given the effect that its words imply. The language of Judge Hough in the present case seems to us sufficient.

“It is, however, urged that any interpretation of the act which enables a seaman on a foreign ship to accomplish that which is embodied in the decree appealed from—is violative of the fifth amendment in that it interferes ‘with the liberty to contract on such terms as may be advisable to the parties to the contract,’ and is therefore a ‘deprivation of liberty without due process of law’; and for this reliance is placed upon *Allgeyer v. Louisiana*, 165 U. S. 578.

In our opinion this very contention was in substance made in *Patterson v. The Eudora*, 190 U. S. 169, and there disposed of, and this decision was recently approved in *The Talus* (S. C. U. S. Dec. 23, 1918).

The employment and discharge, treatment, status and punishment of merchant seamen has long been a part of the regulation of waterborne commerce. With the advisability or expediency of declaring all seamen, irrespective of nationality, to have a status, or be entitled to treatment when within a harbor of the United States totally differing from the treatment or status accorded them in every other part of the world—we have no concern—but entertain no doubt of the power of Congress to enact this statute as a commercial regulation.”

It is argued that the Seamen’s Act should be limited in application to the right to demand half the wages *earned while the vessel is actually in the waters of the United States*. In other words, it is contended that if the vessel comes into the port of New York, for instance,

on the 1st of December, 1919, and remains until the 15th of December, the crew would be entitled to receive one-half the wages they have earned. The present rate being \$75 per month, they would be entitled to one-half of \$37.50, or \$18.75. If this half is refused, then what is the seaman entitled to? Under the theory suggested by the shipowner, he would be entitled to \$37.50, but the act plainly says "any failure on the part of the master to comply with the demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned." This surely means wages since the commencement of the voyage. This has been the effect given to the act by every decision of the United States District Court, where the section has been considered. The latest reported case is *The Sutherland*, District Court of Maine, decided May 19, 1919, 260 Fed., 247.

It comes back to the proposition that this Court must interpret this section, first, as it is applicable to American ships; give to it the natural and reasonable construction that it should have in view of the language of the previous amendments to the statute, the present and past condition of our merchant marine; then apply the act in the same manner to the foreign vessel that chances to come within its effect. It is presupposed that in this operation this Court will follow the rule laid down by the majority in the *Neilsen-Rhine* decisions, to wit (248 U. S., 205) :

"But we are unable to discover in passing this statute Congress intended to place American shipping at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

I would respectfully refer the Court to the previous phraseology of this act of Congress. It was the act of July 20, 1790:

"Every seaman shall be entitled to receive from the master of the vessel to which he belongs, *one-third part of the wages which shall be due to him at every port where such vessel shall unload and deliver her cargo before the voyage is ended, unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast is fully discharged at the last port of delivery, he shall be entitled to the wages which shall be then due.*"

This was amended by the act of December 21, 1898, to read as follows:

"Every seaman on a vessel of the United States shall be entitled to receive from the master of the vessel to which he belongs *one-half part of the wages which shall be due him at every port where such vessel, after the voyage has commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract; and when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him as provided in Section forty-five hundred and twenty-nine of the Revised Statutes.*"

The amendment of December 21, 1898, gave to seamen on American vessels one-half the wages due them, at a loading or discharging port. This section had no effect upon and did not apply to foreign vessels. The act of March 4, 1915, does apply and was intended to apply to foreign vessels.

The act of March 4, 1915, reads (*italics ours*):

"SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs *one-half part of the wages which he shall have then earned* at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Is it possible that by this change Congress intended to give the seaman a right to demand a lesser portion of his wages than he had a right to before amendment?

As stated elsewhere in this brief, Congress looked into the matter of interfering with treaty provi-

sions. Congress considered previous decisions of the Supreme Court of the United States on the question of the right of Congress to control foreign vessels and seamen. The act was legislated deliberately and with the intent of bringing about certain things. It was to build up the merchant marine of the United States, improve conditions at sea, and if possible to drive the Oriental employee from the position that would be filled by the Caucasian if self rule did not prevail.

Here is an ambiguity and we invite the Court to here properly apply the rule sought to be improperly applied by our adversaries, to wit, when there is an obvious ambiguity in the meaning of the Act itself, look to the title of the act for light—with cases cited under opponent's brief, Point I, at pages 5 and 6, *Holy Trinity Church v. The U. S.*, 143 U. S., 457, etc.

The words "half wages earned" were inserted in the place of the words "then due" and the proviso "all stipulations in the contract to the contrary shall be void" was put in particularly to affect the contract existing between the foreign shipowner and his seamen, as well as provisions that might be inserted in contracts between seamen and the ship on American vessels which would sign away their rights given under the statute.

It must be conceded that Congress knew that foreign ships signed their seamen on in home ports for return voyages from one to three years' duration, with a provision that no wages were to be paid to the seamen, except at the option of the

master, until the end of the voyage in the home port. It was to build up the merchant marine of the United States. In other words, to create such conditions on board American vessels as would permit the employment of native Americans on board them, and then in order that the American ship should not be put at a disadvantage in competition with the foreign vessel, by reason of having created these conditions, these conditions were imposed likewise upon the competing foreign vessel.

The result was interesting and history has shown that the effect was to release the law of supply and demand as to labor. Wages were higher in America in shore employments than they were in shore employments in foreign countries. Wages of seamen in America were likewise higher, because Americans would go to sea only when the wages were an inducement. So the wages were correspondingly lower on foreign vessels than they were on American vessels. As long as these contracts were enforced by treaty obligations, it required our police power to arrest their seamen who broke the contracts. The seamen on foreign ships would remain in bondage; their wages remain stationary. The American ship, when it came to close competition where the 4 to 6 per cent. wage operating cost counted, would be run out of business. Danish ships were chartered and put in competition with American vessels in the sugar trade before the act was passed, and were able to under-bid American shipowners by reason of the fact that their labor cost was less. To-day Danish ships can offer no cheaper freight rate to shippers than can the American ship, for their wages are just the same as they are on American ships.

The effect of Section 4530, as enforced against foreign vessels in 1916, 1917 and up to the present time, has been this—when seamen on foreign vessels have come to our ports dissatisfied with the wages or other conditions prevailing on the ship, they have demanded half wages. If the demand was refused, they sought their remedy in court, the same as seamen on American ships could do under the circumstances. If they left the ship, as they usually did when the demand for half wages was refused, a vacancy was created which had to be filled before the vessel could depart. That meant that the foreign ship had to go into the American labor market to replenish her crew. It is not easy to operate a ship with part of the crew at \$75 per month and the rest of them, engaged in the same labor, receiving \$50 per month. So it was that in October, 1917, British and foreign ship-owners gradually raised their wages at home ports to the American standard.

The result of the enforcement of the act as to American ships has not been wholesale desertion of seamen because of the arrest provision of the act. Quite to the contrary, desertion from American ships are hardly ever heard of. Since higher wages have been paid on foreign ships, desertion in our ports from their ships are very rare.

I urge these particular conditions, because this Court, in the case of *Robertson v. Baldwin*, 165 U. S., 275, seemed to think that the enforcement of strong penalties was necessary to the maintenance of a crew aboard a ship. To-day men work by *reason of hope* rather than *fear*. We are rapidly approaching the time when it will be necessary to carry the democracy which we practice in our political life into our industrial life. Those

who are producing and working demand rightfully to share in the profits of their toil. Profit-sharing schemes of various sorts have been adopted by many of the most successful industrial organizations in America.

The number of native Americans on board our vessels at the present time, according to reports filed with the Department of Labor, has increased from 5 per cent. of the total to 55 per cent. of the total since 1912 in overseas trade. When we consider that our overseas merchant marine has increased from less than a million tons to ten million tons in the same period, it is most remarkable. The total world tonnage to-day is no greater than it was in 1912, but 10,000,000 tons of it, or one-fourth, is under the American flag and over half the men, exclusive of officers, are American citizens. More than 75 per cent. of the balance, composed of aliens, have obtained their first papers, indicating their desire to become citizens of the United States.

Now the English protest that this is wrong; that we are taking their seamen. We are not sure that the same cry did not go up between 1790 and 1812. It may have had something to do with the repression of seamen by the British "men of war," which brought on the War of 1812. How much of it was due to this original act, giving seamen on American ships some liberty, we don't know. But of this much we are certain, so long as America is giving to human beings justice and right, and there is nothing detrimental to the interests of human beings in the enforcement of this section, it cannot be offensive to the people of England, no matter what the government of England says or does.

And with this view of the effect of the statute we need not fear retaliatory legislation. Let England do all she will to improve the conditions of the seamen on her own ships and extend that doctrine and enforcement to foreign ships, including ours. So long as it is in the interest of humanity, it will never injure American ships, but benefit them. This is the view of the whole matter (as I urge in other parts of this brief) that should be taken by the British Government and others opposing.

POINT II.

Section 4530 is constitutional and enforceable against foreign vessels to the same extent that it is enforceable against domestic vessels.

What is really urged here by the foreign shipowner is that a contract, valid where made, should not be interfered with. That, inasmuch as certain property interests are vested in the contract, the Court, in giving no effect to the contract or failing to enforce it, is violating the Constitution of the United States.

As pointed out in the brief of the libelants-respondents in the case of *Dillon v. Strathearn*, Congress of the United States is not invalidating the contract, but it refuses to give force or recognition to the contract in our courts. What the shipowners are really trying to do is to get our Courts to give this contract, which requires continuous service on the ship, until the end of the voyage, force and effect in a jurisdiction where the

public policy of the country is distinctly and definitely to the contrary.

But the power of Congress to invalidate foreign contracts cannot be doubted. The proposition is hardly debatable and worthy of the great amount of space occupied in supporting it in the briefs filed for foreign interests here. If the Supreme Court holds that Congress has not the power to pass and enforce any law it sees fit as to conditions under which foreign vessels may enter our ports, for the purposes of trade, it will strip the United States of its sovereignty. As Chief Justice Marshal said in *The Exchange*, 7 Cranch., 116, "the jurisdiction of the nation within its own territory is necessarily exclusive and absolute and is susceptible of no limitation not imposed by itself." It would seem that the right of Congress to impose duties on goods imported from foreign countries into the United States could be seriously questioned if foreign countries took the precaution to make contracts in conflict with the tariff law of America. It would seem that foreign steamship companies could override the provisions made by Congress to protect the health and morals of the citizens of the United States by contracts providing for the bringing of diseased and otherwise undesirable persons into the United States. Our right to exclude foreign ships from competition in our coastwise trade could be upset by the use of contracts, if such a doctrine were to prevail.

When the nations of Europe were first beginning in the fourteenth, fifteenth and sixteenth centuries to extend their commerce, each asserted certain rights to control the seas. Great Britain claimed and actually exercised dominion over certain waters adjacent to her islands known as the British Seas.

Catherine of Russia, the King of Spain and the King of Portugal also exercised certain exclusive jurisdiction over the seas adjacent to shores, while the Italians, Greeks and others struggled for control of the Mediterranean. In later years the question of the control of the seas or freedom of the seas became a serious one between Holland, France and England, various wars ensued and, finally, the doctrine that the navigable waters of the world should be free to the use of all people came into a less nebulous state, but no one has seriously contended until now, that any nation had lost the control of its own territorial waters by reason of the gradual extension of this doctrine.

The United States, in its effort to carry freedom of the seas to the man of the sea, deserves the approbation of mankind.

In *The Wildenhus*, 120 U. S., 1, Chief Justice Waite said :

“It is part of the law of civilized nations, that when a merchant vessel of one country enters the port of another, for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise, the two countries have come to some different understanding or agreement.”

That case was cited with approval by this Court in the *Bark Eudora*, 190 U. S., 177. The same contentions as to the liberty of the contract and unconstitutionality urged here were made in the *Bark Eudora*, and were there disposed of. In *The Eudora* the contract was made in the United States, to be performed on a British vessel. Cases were cited to the effect that as the performance was to

be had on a British vessel, the laws of the United States could not be used to invalidate it. The Court, at page 174, said:

"We are unable to yield our assent to this contention. That there is, generally speaking, a liberty of contract which is protected by the Fourteenth Amendment, may be conceded, yet such liberty does not extend to all contracts. As said in *Frisbie v. United States*, 157 U. S., 160, 165:

"While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessities of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy.'"

The last paragraph of the opinion in *The Eudora*, at page 179, is interesting in view of the contention of the shipowner, that the law should be interpreted one way as to foreign vessels and another as to domestic vessels:

"We are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce those provisions in respect to foreign equally with domestic vessels."

POINT III.

The Seamen's Act and all of its parts is remedial in character and should be liberally interpreted with a view to effecting the purposes intended.

Scott v. Reid, 10 Peter, 524-526;
Park v. Turner, 12 How., 39;
U. S. v. Nickerson, 17 How., 204, 209;
U. S. v. Padelford, 9 Wall., 531, 537;
U. S. v. Hodson, 10 Wall., 395;
Insurance Co. v. Dunn, 19 Wall., 214, 224;
Telegraph Co. v. Eiser, 19 Wall., 419, 427;
Texas v. Chiles, 21 Wall., 488, 491;
McBurney v. Carson, 99 U. S., 567;
Jones v. Guaranty Trust Co., 101 U. S., 622;
Gertgens v. O'Connor, 191 U. S., 237;
Belcy v. Naphtaly, 169 U. S., 353, 359;
N. Y. etc. Ry. Co. v. Int. Comm., 200 U. S., 361;
Bank v. Dearing, 91 U. S., 29, 35.

Under this point, which is an important one, it seems to me we should go into the practical conditions that gave birth to this act, the conditions which existed at the time of its passage and the result which has followed its partial enforcement.

The Seamen's Act, so far as it relates to the status of seamen, was a direct result of the decision of the Supreme Court of the United States in the case of *Robertson v. Baldwin*, 165 U. S., 275, which holds with relation to Sections 4598 and 4599, the seaman's contract was a peculiar one and arrest for desertion or breaking of a civil contract was

not in conflict with the Thirteenth Amendment. The Court in that instance held, at page 282:

"From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to a certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies upon contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, 'to rot in her neglected brine.' Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and, in some cases, the safety of the ship itself. Hence, the laws of nearly all maritime nations have made provisions for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles."

As indicating the influence of the *Robertson-Baldwin* decision, I refer the Court to the speech of Senator George Sutherland before the United States Senate October 21st, 1913, reported at page 66 of the Congressional Record of that date.

"Mr. President, *I may pause at that point long enough to say that my attention was recently called to the decision of the Supreme Court of the United States in the One hundred and sixty-fifth United States, in which I was somewhat astonished to read the opinion of the majority of the court, holding substantially what it stated here, that a seaman, notwithstanding the thirteenth amendment*

to the Constitution, could be bound to involuntary servitude, provided he had agreed in advance to serve upon the vessel for a particular length of time.

I say I was astounded to read that, because I had always believed that the provision of our Constitution with reference to involuntary servitude was wider than the question of slavery; that it meant precisely what it says; and that nobody could be compelled against his will to serve another for a single day. The Supreme Court said that because he had agreed in advance to accept this service or to bind himself to this service, he therefore voluntarily entered the service, and that the fact that he might conclude thereafter to quit the service would not render it involuntarily.

It seems to me that the fallacy in the argument of the court is perfectly plain, because although a man has made a contract to serve another for a particular length of time, the moment he concludes to repudiate the contract he becomes liable, of course, to an action for damages; but if having concluded to repudiate the contract he be compelled to comply specifically with the terms of the contract, his service from that moment becomes involuntary. Otherwise a man could bind himself for life to serve another, and in that way bind himself to a condition of slavery. I think the decision of Justice Harlan, who dissented from the majority decision of the court, proceeds upon the better reasoning."

It is quite true, as will be observed in the *Robertson-Baldwin* case, that governments, since the beginning of early time, have held seamen rigidly to their contracts of employment, with dire punishment for breaking. It is equally true that the institution of serfdom was well established and flourished in England and Continental Europe for

many centuries, while seamen were slaves of the sea. The shore servants finally obtained their liberty, and have maintained it in America. No man in the United States of America has been required to work by threat of jail sentence in any shore employment, except during the prosecution of a war, when such restraint of personal liberty was necessary in order to preserve the state.

The physical conditions that existed on the high seas when these contracts and customs grew up about the sailor were entirely different from the physical conditions that existed when the Seamen's Act was proposed and passed by Congress, and materially different from the conditions which exist to-day. Those contracts, laws and treaties calculated to hold the seaman to his ship and prevent desertion were developed when commerce was in its infancy. Substitute seamen were scarce or were with great difficulty obtained to take the place of deserters. All trade was carried in sailing vessels; a high grade of skill was requisite. Some ports were visited by ships only once in one or two years, and desertion of a crew under those circumstances was indeed disastrous. To-day the world's trade has grown a million fold. There is scarcely a port in the world that is not visited by one or more ships each month, while from the busy ports where seamen desire to leave there are a dozen or so clearances each day. The skill required of seamen in the operation of steam vessels is no longer so great, and these matters should be borne in mind. Seamen may desert their *ships* under the modern law, but they do not desert their *calling*, provided the conditions on the ships are favorable. In ports where seamen desire to leave the ships there are al-

ways seamen to take their places. The man who is not restrained of his liberty, who is given decent treatment, as most humans desire these days, seldom leaves the ship. At this stage of the world's development, those who do not treat their seamen in that manner deserve to lose their crews and to stand whatever financial penalty follows.

Certainly our Courts should not be called upon to enforce contracts of this sort, calling for involuntary servitude, when such contracts are so inconsistent with right and the whole tendency and trend of society, we again refer to the Congressional Record, page 44, date of October 21st, 1913, the speech of Senator LaFollette, who introduced the measure:

"Mr. President, of course I am a landlubber and have to take my tutelage from those men who have been at sea. I never shall be able to express my very great obligation to Andrew Furuseth, who for the last four years has called upon me almost every Sunday morning to talk with me about this legislation. Andrew Furuseth is a sailor. He is a Norwegian Americanized, one of the most intelligent men it has ever been my good fortune to meet. For 19 years he has been sitting up there in that corner of the gallery waiting to be made free. Whatever I happen to know about this subject I have acquired from talking with him."

Ever since the *Robertson-Baldwin* decision, Furuseth has been striving to free the sailor. No man has given his life to a great humane cause more splendidly than Furuseth has given his.

Even Senator Burton, who opposed the Seamen's Act, in a speech on October 21st, 1913, said:

"Mr. President, there is one provision in the bill that I do not believe there will be a dissenting voice about in its relation to foreign nations. It is the abolition of arrest for desertion. It has been maintained that the arrest-for-desertion statute was passed in the early nineties of the century before the last; that a fugitive-slave law was passed at about the same time; and that they are very similar in their phraseology.

This bill is ingenious from the standpoint of the seamen. I am not going to blame them for it. It has three propositions: First, a man may desert without arrest; second, at any port into which he goes, on giving 48 hours' notice, he may have half his pay; third, no allotment shall be given out from his wages.

That makes it possible for the sailor to leave his employment whenever he chooses, and whether his contract is finished or not, whether the time for payment has accrued or not, he may receive half his wages.

I do not object to that kind of a provision as it relates to American seamen, but it is in direct contravention of international law and our treaties with foreign countries, and it has provoked vigorous protest from them. They say, 'you have no business to go on our ships and say, as you do here in this statute, that the courts of the United States shall be open to them.' This proviso is as follows:

'Provided further, That this section——'

That is the one relating to the payment of half wages after 48 hours of demand therefor. There was very little opposition to that from any person who appeared before the committee, but there is this proviso:

'Provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.'

That is a direct violation of treaties without any notice whatever that we intend or desire to terminate them.

Now, let us see, first, what is the general international law on that subject. It is stated in the *Wildenhus* case, *One hundred and twentieth United States, 11.*"

The bill as passed was amended to give due notice of abrogation of treaty provisions.

Surely Senator Burton cannot be presumed to have misunderstood the purposes of this act at that time.

If it occurs to this Court to give ear to the suggestion that has been made, that this act was intended to benefit only American seamen on foreign vessels, then let us consider for a moment what would be the result of such an interpretation. America, with a merchant marine of less than a million tons in overseas trade before the passage of this act, due to war emergency, contracted to build sixteen million tons of ships, equivalent to one-third of the world's total tonnage. Ten million tons are now afloat, and considering their hasty construction are successfully carrying one-third the world's trade. They are manned by crews, 55 per cent. of whom are citizens of the United States and 50 per cent. of the other 45 per cent. have their first papers (exclusive of officers). Due to the equalizing effect of the Seamen's Act and no other cause, and as indicated by the report of Governor Bass of Massachusetts, made to the

Shipping Board hereinafter referred to, the wages on foreign and American vessels within a few months after the Seamen's Act had taken effect, were practically equal. They are still practically equal. Capital is flowing into American ships.

What will result if this Court holds that Congress has exceeded its power in giving foreign seamen the same right to be free on foreign vessels, while in the waters of the United States, that seamen have while on American vessels? The seaman's wage cost in foreign countries will drop below the seaman's wage cost in America. The seaman on the foreign ship will be a slave to his vessel (for he cannot leave if he has no money). American ships will shortly be at a disadvantage, because they will have to pay higher wages. Such a condition of affairs a majority of this Court believed undesirable in the *Neilsen-Rhine* case. The words of Mr. Justice Day were:

"But we are unable to discover that in passing this statute (See. 11 Advances) Congress intended to place American shipping at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

And again this Court has held in *The Eudora*, *supra*, at page 179:

"Whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce those provisions in respect to foreign equally with domestic vessels,"

quoted in full under Point II.

An interesting side light on the meaning of Section 4530 is indicated by the speech of Senator Fletcher on October 21st, 1913, in the United States Senate, page 44, United States Congressional Record:

"This riffraff, these derelicts that are picked up and used and put into positions of responsibility on these vessels, also set the rate of wages; they fix the standard of wages; and consequently again, that system is most demoralizing and to be deprecated.

I speak then, for the men whose labors and skill are employed on the ships, as well as for the public who use the ships; and in doing that I speak also, I believe, for those who build, own and operate the ships. I speak for a merchant marine of dignity, capacity and strength commensurate with the position of the greatest commercial Nation of the world. England may take first place in the naval world; Germany may take first place in the military world; but America takes first place in the commercial world. As peace lasts longer than war, the latter is the most important place to take; and it means that a nation in such a position can dictate both in peace and in war, using only the weapon of trade, and will not likely need any other."

It is highly desirable that a thorough interpretation of Section 4530 be given by this Court so that shipowners, foreign and domestic, and seamen, may know just where they stand. It is briefly the seaman's contention that there should be given to this section the simplest meaning possible. We will assume that the power of Congress to do what it says it does cannot be questioned. Only two clauses of the act have been deemed ambiguous. First, the

provision as to five days, and, second, what is meant by "half wages earned."

The question of what is meant by five days will be disposed of under the case of *Dillon v. Strathearn*. Suffice it to say that it was held in the Circuit Court of Appeals that the provision that the demand shall not be made before the expiration of nor oftener than once in five days, relates to a certain time, to wit, the commencement of the voyage; the time at which the relationship of the seaman and vessel became fixed by the contract. In other words, after the voyage is commenced, at any loading or discharging port, the seaman is entitled to receive one-half the wages he has then earned which have not been paid. To apply any other interpretation is straining the language of the statute and would result in an irregular effect. For instance, many ships come into port, load and discharge and go out before five days elapse, others take longer.

One of counsel argued the case of *Janssens et al. v. Italier*, referred to by opponents, before the United States Circuit Court of Appeals for the Second Circuit. The decision by Judge Hough, admitted to be dicta "for the future guidance," came as quite a surprise, for counsel for the shipowner even had not urged that as a ground for dismissing the libel and the question was not argued by either side before the Court. It would seem, therefore, that with all due respect to Judge Hough, he has erred in that instance through failing to have given proper and careful consideration to the effect of his decision. In passing, it is only fair to note that the decision of the United States Circuit Court of Appeals for the Fifth Circuit in the *Dillon*-

amendments, not less. The interpretation suggested in Judge Neterer's decision is wholly out of the question as applicable to American vessels. The decision given in the *Nellman-London* case, 241 Fed., 863, is more reasonable, but still not the one intended by Congress, for the operation of that decision is to give the seaman less wages than he had before the act was amended. The bill was opposed by representatives of foreign shipowners, and the reports indicate that their understanding was the same as that of Mr. Schwerin.

Ever since the Seamen's Act has been enforced or attempted to be enforced by seamen, it has been opposed by foreign interests and by the British Government as *Amicus Curiae*, to wit: In *The Ixion*, *Nellman-London* and *Dillon-Strathearn*.

The confusion and divergence of opinion as to the meaning of Section 4530, and particularly the words "half wages he shall have then earned," is due principally to the efforts of counsel engaged by the British Government. In the meantime the act has had the effect of giving American seamen half the wages they have earned, on demand, in a loading or discharging port, whether in American or foreign ports. The result has not been wholesale desertion of American ships by their crews. This control of his wages by the seaman has tended to stabilize him and make him more contented and efficient on American ships. Our vessels to-day are carrying smaller crews in ratio to tonnage than the vessels of any other nation. Japanese ships leaving from New York carry 20 per cent. larger crews than vessels of America. Desertions from American ships in foreign ports are practically unheard of.

Prior to the enforcement of the Seamen's Act, as indicated by reports filed by the Department of Commerce and Department of Labor, wages on foreign vessels were from 30 to 50 per cent. lower than on American vessels in the same trade. Wages on American vessels were advanced to \$75 per month by agreement between the Seamen's Union and the Shipping Board and private owners in April, 1918; the agreement to last for the duration of the war. Within six months thereafter practically every vessel flying a foreign flag that touched in waters of the United States had raised its wages to the American level. In some countries they paid lower straight wages, but made up for the difference by paying a large bonus. While the foreign shipowners were making up their minds to pay a higher rate of wages, desertions were frequent from their ships. Our Courts enforced the act, but as soon as the foreign shipowner began to pay the rate of wages paid on American ships, desertions practically ceased. To-day, with the exception of Japanese and French vessels, all seamen's wages are about equivalent to the American rate.

The wage operating cost of American merchant ships is estimated at 4 to 6 per cent. of the total cost. Freight rates on American and foreign vessels have advanced 1,000 per cent. since 1914, and are still maintained at that high rate. The wages on American ships have advanced about 100 per cent. in the same period. Wages on foreign ships have advanced from an average of \$30 a month to \$85, or nearly 300 per cent., but the freight rates on foreign ships have advanced also 1,000 per cent. Therefore, we have at present an ideal condition on the seas.

The seas are free to all people for their trade. The law of the sea, due largely to decisions of this Court, is becoming uniform. Now, if we can, as the Seamen's Act has done, maintain the wage equilibrium that has been established by freeing the seaman from bondage, then the sea indeed will be free to commerce. In a short time foreign governments must yield to the demand of their own people to free their seamen or those governments will have no seamen.

The following excerpt from a report filed with the Department of Labor shows the remarkable increase of wages on foreign ships:

WAGES PAID SEAMEN AND FIREMEN ON VESSELS CLEARING FROM
NEW YORK IN 1915.

Nationality	Date	Seamen	Firemen
	1915		
American	June 30.....	¹ \$29.70	² \$39.34
		³ 30.00	⁴ 40.00
British	July	30.60	35.00
Dutch	November	28.20	32.90
Danish	December	30.00	35.00
Swedish	November	20.25	⁴ 22.95

¹ 93 ships.

² 90 ships.

³ Union scale.

⁴ \$6.75 bonus on round trip.

WAGES PAID SEAMEN AND FIREMEN ON AMERICAN AND FOREIGN
VESSELS IN 1916.

Nationality	Date	Seamen	Firemen
	1916		
American	{ June 30.....	¹ \$45.00	¹ \$50.00
	{ do	² 43.88	² 48.95
British	{ March	30.00	35.00
	{ July	45.00	50.00
Dutch	{ do	45.00	50.00
Danish	{ do	45.00	45.00
	{ June	45.00	50.00
Swedish	{ July	20.25	⁴ 22.95
	{ do	10.30	⁴ 25.09
French	November		

¹ Union scale.

² 93 ships.

³ 92 ships.

⁴ Plus bonus of \$9.45.

⁵ Plus bonus of \$3.00.

WAGES PAID SEAMEN AND FIREMEN ON AMERICAN AND FOREIGN
VESSELS IN 1917 AND 1918.

Nationality	Date	Seamen	Firemen
1917			
American	{ June 30	¹ \$57.58	² \$60.53
	do	³ 60.00	⁴ 60.00
	Aug. 1	⁵ 60.00	⁶ 60.00
English	{ April	45.00	50.00
	October	55.92	58.40
Dutch	March	65.00	70.00
Danish	{ do	45.00	⁷ 50.00
	May	56.00-60.00	⁸ 60.00
Swedish	November	20.25	⁹ 22.95
French	August	21.23	¹⁰ 27.02
1918			
American	May	75.00	¹¹ 75.00
British	October	55.92	¹² 58.40
Dutch	{ February	60.00	60.00
	November	70.00	70.00-75.00
Danish	October	75.00	75.00
Swedish	{ March	20.25	¹³ 22.95
	December	75.00	75.00
Norwegian	do	75.00	75.00
French	May	27.98	¹⁴ 33.78

¹ 93 ships.² 92 ships.³ Union scale.⁴ Shipping Board scale.⁵ Plus 50 per cent bonus.⁶ Plus \$27 bonus.⁷ Plus \$3.86 bonus.⁸ Plus 50 per cent bonus in war zone.⁹ Plus \$14.60 bonus in war zone.¹⁰ Plus \$2.90 bonus.

Please observe that the bonuses indicated in footnotes bring British wages of \$60 per month to \$74.60 per month as compared to \$75 on American ships.

We quote the following from Senate Document No. 228, 65th Congress, second session, an article by Andrew Furuseth, that venerable and respected guardian of the seaman referred to herein, at pages 23-24:

"It has been found that two or more free men will not be kept at the same work for any length of time unless their wages are the same. Experience has further taught that any definite standards of skill tends to

equalize the wages which must be paid. The remedy seemed, therefore, to be to enact laws which would tend to improve the condition of the American seaman and to make such laws, so far as this could be done, applicable to all vessels coming within the jurisdiction of the United States.

Foreign shipowners and their American partners, shipowners or others, who had invested money in foreign vessels fully understood what such legislation would mean to them. They would have to pay the American wage rate. Released economical law would be no respecter of persons, classes, or nations, and so they fought every inch of the way.

They appealed to their own Governments to send protests to the United States, and those Governments protested; they appeared before the Committees of Congress and tried to show that such law would be destructive to American shipping; they warned Congress that foreign shipowners would not send their vessels to American ports; and some American shipowners joined in the warning by saying that they would sell their vessels to foreigners—they would be compelled to do this.

When Congress, nevertheless, passed the bill, they appealed to the President to veto it. When the President signed the bill and thus it became the law, they appealed to the people of the United States, using for this purpose the chambers of commerce, and through the aroused class interests, such part of the daily and monthly press as could be deceived or would take orders. Some shipowners, who for any reason sold any of their vessels, informed the public, through the press, that the 'iniquitous seamen's law' had forced him to sell. They tried to nullify the law through regulations, which the

Department of Commerce had the right to make, and in this they have been so successful that the language clause is nullified and other parts of the act seriously injured. These errors of judgment will have to be rectified, as no doubt they will be, or the act will fail to accomplish the purpose intended by Congress.

As the shipowners have fought for what they conceived to be their class interests before Congress, the President, the public, and in the department, so they are now before the courts. A committee of shipowners in London, such is the information, is to use the best American legal talent obtainable to contest the seamen's act in the courts, presumably on the grounds of the comity of nations, international law, and that Congress exceeded its power in passing this law.

When this legislation is considered in connection with the friendly relations, which ought to govern the conduct of one nation to another, it is not easy to see how the question of comity can at all arise. The United States enacts certain laws dealing with its seamen; the purpose is to induce a better class of men to seek the sea. Better men are needed for the safety of vessels, the safety of life at sea, and for the safety of the Nation. It is part of the settled policy of the United States that there shall be no involuntary servitude, except as a penalty for crime, within its jurisdiction. Americans would not seek the sea while the law governing seamen did not conform to this principle. This Nation, for its own protection, felt impelled to so change the law governing seamen that it would be in harmony with the basic policy of the Nation. In doing this, it did not seek to discriminate in its own favor, it did not discriminate against any nation or between them. There seems to be

no reason for any belief that the United States had any but the best and friendliest motives.

Viewed in the light of the interests of shipowners as such, there is no discrimination. The shipowners of the United States, and of all other nations are, when within the jurisdiction of the United States, placed on a perfect equality. Seamen who are dissatisfied with the wages or treatment which they receive may leave the vessels on which they are serving. That this freedom granted to seamen is by them used to improve their condition is natural and was expected. It is part of the purpose to improve the personnel of the merchant service. It may be that other nations, through the precedent set by the United States, may feel impelled to adopt similar laws to govern their seamen, and shipowners of other nations may, from this point of view, consider this legislation as unfriendly to them; but to this contention, if it shall in fact be made, the answer seems obvious. Any class may and is likely to protest when deprived of any special privilege; but such protests arise out of selfish motives and they are inevitably swept away by the advancing civilization based upon Christianity. The slavery or serfdom which bound the toilers on land has passed from all Christian countries. The corresponding status of the seamen must necessarily follow."

We have before us a copy of the original report of Governor Robert P. Bass of Massachusetts to the United States Shipping Board on "Marine and Dock Labor" dated December 31, 1918. The substance of it as it relates to seamen is admirably stated in an editorial of the *Springfield Republican* dated May 11, 1919, from which we quote the following:

"Wages of British seamen and firemen ranged in 1911 from \$20 to \$25 a month, while American wages were from \$30 to \$50. The American rate for both seamen and firemen had by the end of 1918 reached \$75. With foreign sailors free to seek employment at these wages foreign ships were faced with the alternative of raising wages or losing their crews.

An examination of the articles of 21 British ships clearing from New York last December showed that seven had hired all or part of their crews in New York and all but one were paying the American rate of \$75 a month. The other 14 were paying their British crews a bonus in each case of \$15 a month, bringing their actual pay to \$72.50 for seamen and \$75 for firemen. Each of eight Norwegian ships, four of six Danish ships and three of four Swedish ships paid the American rate in dollars, while the remaining Scandinavian vessels paid bonuses of from 120 to 140 per cent in addition to the low national scale of about \$21.

This glimpse of the foreign records indicates a rapid passing of the time when the foreign merchantmen could underbid American vessels as carriers. The tables on wages show not only an actual steady increase in pay of American sailors, but an increase relative to the cost of living. The service has become attractive to a higher quality of labor. Gov. Bass's board also demonstrates that compared with conditions before the war the cost of operation of American ships is less than that of their foreign competitors. The United States clearly has everything to gain and nothing to lose by continuing the law that sets the pace for the merchant navies of the world."

This indicates clearly that the Seamen's Act has had the effect claimed for it, to wit: has equalized substantially American and foreign wages in the trans-Atlantic trade.

Two other circumstances indicate clearly the change of public opinion on the question of serfdom at sea, since the decision of this learned Court in the case of *Robertson v. Baldwin*, *supra*.

The Republican Platform in 1912 contained this paragraph:

"We favor the speedy enactment of laws to provide that seamen shall not be compelled to endure involuntary servitude, and that life and property shall be safeguarded by the ample equipment of vessels with life-saving appliances and with full complements of skilled able-bodied seamen to operate them."

The Democratic Platform in 1912 contained this provision:

"We urge upon Congress the speedy enactment of laws for the greater security of life and property at sea; and we favor the repeal of all laws and the abrogation of so much of our treaties with other nations as provide for arrest and imprisonment of seamen charged with desertion, or with the violation of their contract of service. Such laws and treaties are un-American and violate the spirit if not the letter of the Constitution of the United States."

The final draft of the League of Nations Treaty contains a provision on labor which deals with this particular act. The same question has again come up before the International Labor Conference at

Washington, and an effort is being made at the present writing to have all governments free their seamen as America freed hers and all others who touch at her ports. Even if other nations do not follow the laudable example of America in freeing the last of bondage workers, the operation of the economic law involved will do it in time.

Our opponents are continuously urging that our law is an unjust interference with their commerce and contrary to principles of international law and rules of comity between nations. Comity is nothing more than courtesy. Congress has stated we are going to do something in America to benefit our seamen and try to get our own people again to follow the sea. We are not going to do this in such a way as to discourage investment of capital in American ships. We are going to make this act applicable to all ships that come into American ports for the purposes of trade. Furthermore, shipowners had due notice of the passage of the act, and one year before its enforcement and after its passage to get ready for it. They came in here deliberately knowing the act was in existence and understanding its terms. If they didn't want to come in, they could have stayed out and nobody would have been offended and no rights infringed, but they chose to come in, and as has been pointed out by the attorney for the Government, came in with the implied promise that they would obey our law.

The Twenty-third Article of the League of Nations Covenant, which has been agreed to by Great Britain, provides under subdivision A:

"The members of the League will endeavor to secure and maintain fair and humane conditions of labor for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations."

Of course, their standard of what is fair and humane may be different from ours, but let us enforce our standard here, and let the foreign seaman be judge whether it is beneficial to him or not.

And now we are at this point. Let us inquire into what kind of a contract it is the shipowner would ask our courts to enforce. It is a contract made by a man who needs a job; he signs a formal document which binds him to work at a certain rate of wages for a period of twelve to thirty-six calendar months, as the case may be, to go with the vessel to any part of the world as the master may direct, except the Arctic and Antarctic regions, with the express stipulation that he shall have a right to draw no pay, except at the option of the master; that he shall have no right to go ashore except at the option of the master; that he will obey all orders given him during the term of his employment and be entitled to his wages and final discharge only in a port of the United Kingdom. When a man signs that contract he signs away his liberty for as long a period as the master keeps him away from his home port during the life of it. If his vessel chances to go into a port like Buenos Ayres, where the crimps abound, where wages are low, the master may put him on green coffee and indigestible rations, hard work, and abuse him until he is driven ashore,

a deserter from his ship. The avarice of the master is incited by the balance of wages which he leaves behind, lending motive leading to his persecution. The crimps ashore, as pointed out by this Court in the *Neilsen-Rhine* case and in the *Bark Eudora* case, stand ready to fleece him and hand him over to another ship, his wages being signed away in advance. No man or race of men can live under such environment and resist the forces of degradation and degeneration that assail him.

Such a contract, depriving the man of his liberty; making him a bonded slave, robbing him of self-control and opportunity to help himself, is the one which the shipowners in this instance ask our Courts to enforce.

This contract, we say, is contrary not only to the letter of this statute, but utterly contrary to the spirit of democracy and liberty which brought this country into being, and which to date hereof has been the predominating thought of its people. No consideration is deserving to such a contract at the hands of this Court.

On October 21, 1913, in the United States Senate, George Sutherland, now of counsel in the case of *Dillon-Strathearn*, being argued before this Court, read from an article entitled "The Decay of the Steamship in Europe and America" the following:

"The Caucasian is leaving the sea; the Oriental is filling the vacancy; sea power is in the seamen. Vessels are seamen's working tools. Tools become the property of those who handle them,"

and then said:

"This is not a prophecy; it is a fact. If the reader needs proofs, let him visit the docks where the ocean cargo carrier—the tramp—is taking in or delivering cargo. He will find that while the officers are white, the sailors and firemen are very largely from the races which inhabit Africa, Asia, and the Malay Islands. If he be fond of statistics and knows the way they are made up, so as to hide from John Bull the loss of his sea legs, the decay of his sea power, let him examine the reports issued from year to year by the board of trade. If he be told that the tendency is sporadic, let him ask the boys along the seacoasts of Europe and America, north of the Mexican line, what they are going to be when they grow up, and the answers will be truly illuminating. Let him ask the seamen if they will accept a job on shore, and he will find that they are willing to accept anything to get away from the sea. The men are leaving the sea; the boys are shunning it.

The compelling cause of this drift from the sea is a great wrong, which can only be cured by legislation. National commissions and international conferences have sat and inquired into losses of life at sea; they have reported vessels to be undermanned both in individual skill and in numbers of seamen employed. Recommendations have been made and forgotten. The *General Slocum* was lost with about 1,000 lives. The coroner's jury said, 'Inefficient crews'; the commission appointed added, 'Not enough life preservers; inefficient inspection.' The net result was more life preservers, better inspection, but no improvement in the crews. The *Titanic* was

lost. The senatorial commission said, 'Not enough lifeboats; the crew inefficient in skill and number.' There are some more lifeboats, but no more or better men. The drift from the sea is growing and safety diminishing, while vessels are steadily growing larger. Seamen have sought proper legislation in vain for more than 20 years. Congress after Congress have been appealed to, but without substantial results. The seamen are poor; they are lowly; few of them are voters; fewer still can vote, being at sea; they have nothing with which to quicken sympathy and induce action except their plainly told tale. And yet the questions arising from the drift from the sea are of great racial importance; they are of great national importance; they are of great economic importance, and of serious personal importance to those who travel the sea for business or pleasure. The cause of the drift from the sea is simple; the remedy easy, if honestly applied.

1. When a citizen becomes a seaman he surrenders all rights of citizenship, he voluntarily places himself outside of the protection of the thirteenth amendment to the Constitution."

To correct these evils the Seamen's Act was conceived. It is the plain duty of this Court to give it full force and effect.

POINT IV.

The fact that the contract was made prior to March 4, 1916, when the act went into effect on foreign vessels, does not change the result.

The demand for half wages was made April 6, 1916, after the act was in effect on foreign vessels.

Louisville & Nashville R. R. v. Mottley, 219 U. S., 482. In this case it was held by the Court, Justice Harlan writing the opinion, that a contract made prior to the passage of the statute could not be given effect.

The railroad company made a settlement for a personal injury suit with one Mottley, and part of the consideration of the settlement was that he and his wife should be given a pass which would entitle them to free transportation over the railroad during the rest of their lives. An act of Congress was passed making it unlawful to issue such passes. The Court definitely held that the contract could not be enforced, because it was contrary to the public policy of the United States, irrespective of the good faith of both parties. The Court, at page 485, said:

"We forbear any further citation of authorities. They are numerous and are all one way. They support the view that, as the contract in question would have been illegal if made after the passage of the commerce act, it cannot now be enforced against the railroad company, even though valid when made. If that principle be not sound, the result would be that individuals and corporations could, by contracts between themselves, in anticipation of legislation,

render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of the power to regulate commerce. No power of Congress can be thus restricted. The mischief that would result from a different interpretation of the Constitution will be readily perceived."

No further citation under the circumstances seems necessary. The law has been finally settled by this Court in the case of *Louisville & Nashville R. R. v. Mottley*, *supra*, decision rendered February 20, 1911, and has not been overruled or modified.

For these reasons it is respectfully submitted that the decree of the lower Court should be affirmed with costs.

Leave of this Court is requested to file with this brief thirty printed and indexed copies of the Seamen's Act, copies having been served on counsel for claimant-petitioner.

SILAS B. AXTELL,
Proctor for Libelants-Respondents.

W. J. WAGUESPACK,
New Orleans, La.
Of Counsel.

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Supreme Court of the United States

J. M. THOMPSON, Master and
Claimant of the Steamship
"Westmeath," her engines, etc.,
Claimant-Petitioner,

against

PETER LUCAS and GUSTAV BLIXT,
Libellants-Respondents.

October
Term, 1919
No.

Sir:

PLEASE TAKE NOTICE that on Monday, October 6, 1919, at the opening of court on that day, or so soon thereafter as counsel can be heard, we shall make a motion, on the annexed petition, before the Supreme Court of the United States that the above-entitled cause be advanced for hearing on an early day convenient to the Court during the present term, and we shall then and there ask the Court to grant the petitioner such other and further relief in the premises as may be just.

Yours, etc.,

KIRLIN, WOOLSEY & HICKOX,
Proctors for Petitioner.

To

SILAS B. AXTELL, Esq.,
Proctor for Respondents.

SUPREME COURT
OF THE UNITED STATES,

J. M. THOMPSON, Master and
Claimant of the Steamship
"Westmeath," her engines, etc.,
Claimant-Petitioner,
against

PETER LUCAS and GUSTAV BLIXT,
Libellants-Respondents.

October
Term, 1919
No.

On Writ of Certiorari to the United States Circuit Court of Appeals, for the Second Circuit.

Motion by the petitioner to advance.

Now comes J. M. Thompson, claimant-petitioner of the Steamship "Westmeath," and moves the Court to advance the above entitled cause for hearing on a day convenient to the Court during the present term.

1. The petitioner, J. M. Thompson is the claimant of the Steamship "Westmeath," a British vessel owned by New Zealand Shipping Company, Ltd., of London, England.

The libel is brought by Peter Lucas and Gustav Blixt, foreign subjects, against the Steamship "Westmeath," to recover wages earned up to the time the libellants left the ship and the value of their effects which they left on board that vessel.

It is alleged in the libel that the libellants, firemen on the British Steamship "Westmeath," were hired by the master for and during the voyage from

Australian ports to New York, at a certain rate of wages.

That after the arrival of the Steamship WESTMEATH at the port of New York and on April 8th, the libellant Blixt, and on April 10th the libellant Lucas made a personal demand upon the master of the vessel for one-half of the wages then owing them. The demands were refused by the master and that under and by virtue of Section 4530 of the Revised Statutes of the United States, libellants became and were entitled to their discharge and to the full amount of their wages then due and owing. The libel also demands the value of libellants' clothing and effects.

The answer of the claimant admits that the libellants signed on the articles of the Steamship WESTMEATH but denies the other material allegations of the libel.

As an affirmative defense it is alleged that the Steamship WESTMEATH was a British Steamship and the contract of service entered into between the libellants and the ship was governed by the Laws of Great Britain and Ireland and that by virtue of these laws the libellants were not entitled to bring an action for wages.

It is also alleged in the answer that the contract entered into by the libellants was for a voyage not to exceed one year, beginning on August 4, 1915, and that on April 9, 1916, the libellants deserted the steamship WESTMEATH, and thereby forfeited any claim they had to their wages and effects.

2. The facts are briefly these:

On or about the 19th day of December, 1915, while the Steamship WESTMEATH was at the port of Pirie, Australia, two firemen, one of whom

was Lucas, one of the libelants-respondents herein, were procured as substitutes for two firemen who had deserted. Lucas signed on the articles as soon as he was taken aboard the WESTMEATH after they had been read to him, and his signature was witnessed by the chief engineer.

The libelant-respondent Blixt signed on the articles at Sydney, Australia on December 8th, before a Government Shipping officer, and he admitted he was regularly signed on and that he understood the articles which he signed.

The ship's articles which were signed by both the libelants-respondents, were opened at Liverpool, England, on August 4, 1915. By these articles the men were bound to serve for a voyage not exceeding one year's duration to any ports or places within the limits between 75° North and 60° South, Latitude, commencing at Liverpool, thence to Australia, New Zealand and/or United Kingdom ports, and/or other ports within the above limits in any rotation to end at any such port in the United Kingdom or the Continent of Europe within home trade limits, as might be required by the master.

From New Zealand the WESTMEATH proceeded to America, first going to Boston, then to Baltimore and lastly to New York where she arrived on April 3, 1916.

At all these ports the libelants-respondents repeatedly asked for their discharge, offering to take less than the full amount of their wages in consideration of obtaining their discharge.

On or about April 10, 1916, the respondents left the ship and did not return, although the time for which they had contracted to serve had not expired.

3. A stipulation providing for the proof of Foreign law and its admission in evidence was agreed on between the parties.

The District Court ordered that a decree be entered for the libelants and as to the application of the Seamen's Act, the Judge said in his opinion:

"It would appear that the provisions of the law apply to the vessel and that the United States Court has the right to enforce the law. The treaty may or may not have been intended to reserve all rights as to British subjects which were the subject of British Statutes. But Congress had now passed a law which gives a United States Statute an effect over British subjects which is not covered by the British law and must have been intended to supersede the rules governing British vessels under former statutes. The law is to aid American seamen. But they would not be aided if discrimination against British subjects in American ports should result in the stranding of American sailors in foreign ports. The effect of the Act of Congress is a matter perhaps for further treaty but the statement of the law is plain."

The Circuit Court of Appeals affirmed the decree of the District Court. The court in its opinion did not make any mention or discuss the petitioner's contention that Section 4530 of the Seamen's Act should not be construed to apply to foreign seamen shipping on foreign vessels at a foreign port under an agreement valid where made and not to be performed within the United States.

The Court in its opinion held that the act as applied to such a case as this is constitutional on the authority of *Patterson vs. The Eudora*, 190 U. S., 169, and on the ground that the act is a regulation of commerce.

QUESTIONS OF LAW INVOLVED.

The following questions of law are involved:

1. Whether or not it was the intention of Congress and whether the Seamen's Act shou'd be construed to abrogate the contract of a foreign seaman entered into with a foreign ship outside the jurisdiction of the United States by Section 4530 of the Revised Statutes of the United States, as amended, Act Dec. 21, 1898, C. 28, Sec. 5, and Act March 4, 1915, C. 153, Sec. 4, being part of the so called Seamen's Act.

2. Whether or not Section 4530 of the Revised Statutes is constitutional if so construed as to abrogate a foreign contract entered into with foreign seamen on a foreign vessel outside the jurisdiction of the United States.

REASONS FOR ADVANCING THE CASE.

The reasons for advancing the case are, that as your petitioner is informed and believes:

1. The case involves a question of gravity and importance.

2. The Merchant Marines of foreign governments are seriously affected by the Statute in question

because the validity and effect of their contracts with foreign seamen are in doubt and will be until the questions here raised are decided.

3. It is to put an end to this uncertainty that the petitioner respectfully prays this Honorable Court to advance his case.

4. The libelants are wage earners and this is an action to recover wages and libelants' rights are in doubt pending the decision of this Honorable Court upon the issues raised on this appeal, and the rights of many thousands of other seamen and wage earners are in doubt and will be until the questions here raised are determined by this Honorable Court.

5. The questions involved in this case have been frequently before the Federal and State courts in a number of cases since the passage of the Act in question and the various courts have construed the Act differently in many respects.

6. The case of Strathearn Steamship Company, petitioner, against John Dillon, respondent, which is before this court on a Writ of Certiorari, is very similar to the facts in this case and involves the same questions of law. Your petitioner is informed that a motion is being made before this court in that case to advance it for argument, and it is therefore prayed that this motion to advance this case be granted so that both cases may be heard and disposed of at the same time.

It is submitted therefore that it is appropriate that there should be an early hearing of this case by this Court in order that the determination of

the questions involved in this case may govern the same questions involved in the many other cases pending, that conflicting decisions may be avoided, and that unnecessary expense to parties litigant may be prevented.

Respectfully submitted,

J. M. THOMPSON,
Claimant-Petitioner.

By KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant-Petitioner.

LA DEGROVE PUTNEY,
Counsel for Petitioner.

State of New York, }
 County of New York, } ss.:

L. deGROVE POTTER being duly sworn, says:

I am a member of the firm of Kirlin, Woolsey & Hickox, proctors for the claimant-petitioner herein.

I have read the foregoing petition and the same is true to the best of my knowledge, information and belief.

The reason why this verification is not made by the petitioner is that the petitioner, to the best of my information and belief, is not within the United States.

This verification is made in good faith.

L. deGROVE POTTER.

Sworn to before me this
 2nd day of October, 1919.

WM. O. GODDARD,
 Notary Public, Kings County.
 Certificate filed in New York County.

I do hereby certify that I have examined the foregoing petition and that in my opinion it is entitled to the favorable consideration of this Court.

L. de GROVE POTTER.

THOMPSON, MASTER AND CLAIMANT OF THE
STEAMSHIP "WESTMEATH," &c., v. LUCAS
ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 391. Argued December 9, 1919.—Decided March 29, 1920.

Decided on the authority of *Strathearn S. S. Co. v. Dillon*, *ante*, 348.
P. 363.

258 Fed. Rep. 446, affirmed.

THE case is stated in the opinion.

Mr. L. deGrove Potter, with whom *Mr. John M. Woolsey* was on the brief, for petitioner:

This section is ambiguous and is not expressly applicable to foreign seamen on a foreign vessel. Considering the purpose as disclosed by the act and its title, it is quite evident it was not the intention of Congress to legislate for the welfare of foreign seamen, but for the welfare of American seamen alone.

As the meaning is doubtful and as adherence to the strict letter would lead to injustice or contradiction, it is the duty of the court to give the statute a reasonable construction consistent with the general principles of law and comity, and, so far as practicable, to reconcile the different provisions to make them consistent and harmonious.

As this statute is penal, and in derogation of the common law, it should be construed strictly. *Sandberg v. McDonald*, 248 U. S. 185; *Neilson v. Rhine Shipping Co.*, *id.* 205.

If Congress had intended that this section should apply to foreign seamen on foreign vessels, temporarily within a

harbor of this country, in derogation of contracts made on foreign soil, and in contravention of the long established rules of comity and the law of nations it would expressly have provided in the act that it should be so applicable.

This section, and all the sections of the act, deal with American seamen and make provisions for their benefit and safety. *Sandberg v. McDonald*, 248 U. S. 195.

It is a general rule of law, well recognized in this country as well as in most other civilized countries, that a contract valid where made is valid everywhere, and should be enforced unless against public policy, natural justice or morality. Story, *Conflict of Laws*, 8th ed., § 242.

When once the rights and obligations of a particular transaction are fixed, in accordance with the principles of law and policy of the place where they become fixed, it cannot be admitted that these rights and obligations are subject to being varied according to the place or country or time of their enforcement. This fundamental principle is attributed to Cicero by Mr. Justice Swayne in the opinion of this court in the case of *Wilson v. McNamee*, 102 U. S. 572, 574. The enforcement by one sovereign of rights accrued under a valid contract made in the jurisdiction of another sovereign is part of the comity and law of nations.

The law of nations is a part of the law of the land and should be followed by the courts of the United States. *The Amelia*, 1 Cranch, 1; *The Charming Betsy*, 2 Cranch, 64, 118; *Holmes v. Jennison*, 14 Pet. 540, 569.

The contract involved herein, whereby it was provided that no wages were due the libellants until the completion of the voyage, is not contrary to public policy, good morals, or natural justice. Such a contract is valid under the laws of this country as well as those of Great Britain.

This contract is not contrary to public policy simply

because it is in conflict with the provisions of § 4530 of the Revised Statutes. *Northern Pacific R. R. Co. v. Babcock*, 154 U. S. 190. See *Sandberg v. McDonald*, 248 U. S. 185, 196.

That class of cases represented by *The Kensington*, 183 U. S. 263, and *Union Trust Co. v. Grozman*, 245 U. S. 412, on which the decision of the Circuit Court of Appeals in *The Strathearn*, 239 Fed. Rep. 583, was based, are not applicable here. They simply affirm the well recognized principle that the courts of this country will not enforce a foreign contract against public policy. See *Cuba R. R. Co. v. Crosby*, 222 U. S. 473, 478. The Seamen's Act, in so far as it is sought to be invoked in this case, does not place any limitation on the enforcement of an obligation but creates a pecuniary right and obligation in contravention of the terms of a valid foreign contract.

It has always been recognized by the courts as well as the executive branch of the government of this country that the laws and statutes of any State should not be given extra-territorial force and effect.

The English rule is laid down in *Lloyd v. Guibert*, L. R. 1 Q. B. 115, 127; the French rule can be found in *The Dio Adelphi*, Nov., 1879, 91 Jour. du Palais, 1880, pp. 603, 609. In *The Apollon*, 9 Wheat. 362, Mr. Justice Story said, p. 370: "The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens." *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 357; *United States v. Palmer*, 3 Wheat. 610, 631.

This court in the cases that have come before it has construed the act under consideration as not having any extra-territorial force. *Sandberg v. McDonald*, and *Neilson v. Rhine Shipping Co.*, *supra*. To the same effect are: *The Italier*, 257 Fed. Rep. 712; *The Nigretia*, 255 Fed. Rep. 56; *The Belgier*, 246 Fed. Rep. 966; *The State of Maine*, 22 Fed. Rep. 734; 30 Ops. Atty. Gen. 441. *Patter-*

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Argument for Petitioner.

son v. *Bark Eudora*, 190 U. S. 169, is not an authority to the contrary.

The provisions would have ample operation if confined to contracts of seamen on a foreign vessel when made while the vessel is in a harbor of the United States, and then only to contracts of American seamen. See *The Ixion*, 237 Fed. Rep. 142; *The Italier*, 257 Fed. Rep. 712.

Where a controversy concerns the rights and duties of the crew to the ship or among themselves and not involving a breach of the peace, on a foreign vessel on the high seas, or in the port of another country, the law of the flag of the vessel governs the rights and liabilities of the parties just as conclusively as though the controversy had arisen on land within the territorial jurisdiction of the country whose flag the vessel flies, for a ship has long been regarded by the courts and by writers on international law as a floating island of the country to which she belongs. Dicey, *Conflict of Laws*, 2d ed., § 663; Wharton, *Conflict of Laws*, § 473; Minor, *Conflict of Laws*, § 195; Bluntschli, § 317; 1 Calvo *Droit International*, 4th ed., 552; Book VI, § 3; Rutherford, II, c. 9. *Wildenhus's Case*, 120 U. S. 1, 12; *Wilson v. McNamee*, 102 U. S. 572, 574; *The Hamilton*, 207 U. S. 398; Moore, *International Law Dig.*, vol. II, §§ 204, 207; Secretary Bayard to White, Charge d'Affairs at London, March 1, 1889, *For. Rel.* 1889, 447.

Where an act of Congress is passed over opposition of a minority, as in this case, it is to be considered that the words of the act represent all the majority deemed it safe to ask. *Lincoln v. United States*, 202 U. S. 484.

If the provisions of this section which do not specifically apply to foreign seamen of foreign vessels are construed by this court to apply to the case at bar, the effect of such a construction would be tantamount to holding that Congress may legislate as to contracts made on foreign soil and affecting only foreigners. Part of the section provides:

"And all stipulations in the contract to the contrary shall be void." The contract was made at a port of Australia, and, if the words quoted are held to apply to the contract, this court will be sanctioning interference by Congress with the law of a foreign friendly power. That Congress possesses any such power has been denied by this court. *The Apollon*, 9 Wheat. 362.

The Federal Government possesses only those powers which are expressly or impliedly conferred on it by the Constitution. *South Carolina v. United States*, 199 U. S. 437. By no possible stretch of the power to regulate commerce can it be said that Congress possesses the power to regulate contracts of foreign shipowners and foreign seamen made in Australia. *Brown v. Duchesne*, 19 How. 183, 198.

Interference with the liberty to contract on such terms as may be advisable to the parties to the contract is a deprivation of liberty, without due process of law. *Allgeyer v. Louisiana*, 165 U. S. 578.

It is true that consistently with the Fifth Amendment Congress may legislate in such a manner as to deprive persons of the liberty of entering into certain contracts, but the justification for such legislation has always been motives of policy based on the exercise of police power. *Patterson v. Bark Eudora*, 190 U. S. 169.

In order to justify any legislation under the police power it must appear plainly that it has a tendency to rectify the conditions which the legislative body sought to remedy. The courts will look through the form to the substance. *Booth v. Illinois*, 184 U. S. 425, 429. The section does not even attempt to legislate to the benefit of the seaman. It goes directly contrary to the policy of the early Act of 1898, which was held constitutional in *Patterson v. Bark Eudora*, *supra*.

The only effect that the act has produced up to the present is that seamen on incoming vessels habitually

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Opinion of the Court.

demand one-half wages under it immediately upon arrival, and leave the ship at once. Crews are constantly changing, discipline is impaired, and unnecessary expenses are incurred.

Although Congress is not prohibited from passing laws impairing the obligation of contracts, it cannot deprive a person of property without due process of law. *Hepburn v. Griswold*, 8 Wall. 603, 623; *McCracken v. Hayward*, 2 How. 608, 612; *Sinking-Fund Cases*, 99 U. S. 700, 718; *Cooley*, Const. Lim., 7th ed., 507. If this act be applicable to the case at bar, Congress did not merely pass a law impairing the obligation of a contract, by taking away the remedy for the enforcement of a contract, but created a liability on the shipowner in direct contravention of the terms of a legal, binding contract; and therefore violated the Constitution by taking property without due process of law.

Mr. W. J. Waguespack, with whom *Mr. Silas B. Axtell* was on the brief, for respondents.

MR. JUSTICE DAY delivered the opinion of the court.

This case was argued at the same time as Number 373, just decided, *ante*, 348. In this case the libellants shipped as part of the crew of the British Steamer *Westmeath* for a voyage not to exceed one year, before the expiration of which time the vessel arrived in the harbor of New York, where she loaded and discharged cargo. A demand was made for one-half wages under § 4 of the Seamen's Act of 1915. The demand was refused, and an action was begun for full wages. A defense was set up that the libellants were deserters, and, therefore, not entitled to recover. The District Court and the Circuit Court of Appeals held that the libellants' case was made out under the statute. 258 Fed. Rep. 446.

The case is controlled by principles which governed the disposition of No. 373. The difference being that it appears in this case that demand was made more than five days after the vessel had arrived in the United States port. In all other respects as to the constitutionality and construction of the statute our judgment in the former case is controlling. It follows that the decree of the Circuit Court of Appeals must be affirmed.

Affirmed.

COLLINS v. MILLER, UNITED STATES MARSHAL